



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

VOTE SHEET

Date: JAN 17 2003

2003 JAN 24 14:17

TO : The Commission
Todd Stevenson, Secretary

FROM : W.H.DuRoss, III, General Counsel
Stephen Lemberg, Assistant General Counsel
Patricia M. Pollitzer, Attorney *W.D. III*

SUBJECT : Petition CP 01-1 requesting rule requiring product registration cards

Attached is a briefing package from the staff concerning a petition submitted by the Consumer Federation of America ("CFA") requesting that the Commission issue a rule requiring product registration cards with every product intended for children. The staff recommends that the Commission defer decision on the petition.

Please indicate your vote on the following options.

I. Grant Petition CP 01-1.

Signature

Date

II. Deny Petition CP 01-1 and direct the staff to prepare a letter of denial to the petitioner.

Signature

Date

Page 1 of 2

NOTE: This document has not been
reviewed or accepted by the Commission

Initial rh Date 1/17/03 CPSC Hotline: 1-800-638-CPSC(2772) ★ CPSC's Web Site: <http://www.cpsc.gov>

~~CPA 5.0(b)(1) Clearance~~

No Mins/Privileges of
Process Identified
✓ Excepted by Rulemaking
Firms Notified
Comments Processed

1-17-03
AB

III. Defer decision on Petition CP 01-1.

Signature

Date

IV. Take other action (please specify):

Signature

Date

Briefing Package

Petition No. CP 01-1, Petition for Rule Requiring
Product Registration Cards

For Information Contact:

Celestine T. Kiss, M.A.
Division of Human Factors
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CPSA 6 (b)(1) Cleared

No Mfrs/PrvtLbtrs or
Products Identified

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Executive Summary

In July 2001, the Consumer Federation of America petitioned the U.S. Consumer Product Safety Commission (CPSC) "to establish regulations governing recalls and information for consumers concerning children's products." The petition was docketed under the Consumer Product Safety Act (CPSA) (Petition No. CP 01-1).

Specifically, the petitioner requested that to facilitate recalls, manufacturers (or distributors, retailers, or importers) of products intended for children be required to provide a product registration card (PRC) along with every product. The petitioner further specified that the card should:

- (a) collect only information needed to contact the purchaser (e.g., name and address or email address);
- (b) be postage-free with the postage paid by the manufacturer (or distributor, retailer, or importer);
- (c) be pre-printed with the name and model number of the product purchased; and
- (d) state that the information collected will only be used to advise the purchaser of a recall or other important safety information.

In addition, the petitioner requested that the rule require the manufacturer (distributor, retailer, or importer) to maintain this information for a minimum of 20 years, or the useful life of the product, whichever is longer.

Recall effectiveness has been a challenging issue from the Commission's earliest days. Based upon past work in the area, staff concludes that more than one approach to recalls is needed because of the many types of products and hazards. In addition, there are a variety of ways to notify consumers of a recall and a variety of ways to assess the effectiveness of a recall.

Research indicates that direct notification is the most effective form of notice. PRCs are one means of allowing manufacturers to know who has their products in case of a recall. However, even the best-designed PRCs are of no use if people do not choose to fill out and return the cards. In addition, even if consumers do fill out the cards, if the product's useful lifetime is very short (which is the case with many children's products), the original purchasers may no longer have the product; they may have disposed of it or sold/given it to someone else. A PRC is of little or no use to second-hand users of children's products. PRCs may also have limited lifetimes because of consumers' tendency to move fairly often; if a person moves, the address in the manufacturer's database may be useless.

Staff has recently begun a recall effectiveness project that is using a multiple stage strategy to evaluate consumers' behaviors and the whole recall process. The evaluation of PRCs is planned as one part of this project.

CPSC received 28 comments in response to a *Federal Register* notice on the petition: 21 commenters opposed the petition and 7 supported the petition. The majority of comments opposing the petition stated that the scope "all children's products" was too broad and that a number of products should be exempt from a regulation if they meet certain criteria such as low price, short useful life and little risk of causing injury. Those comments that supported the petition stated that current recall methods are ineffective in reaching all affected consumers and direct notification has been shown to improve recall effectiveness.

CPSC staff recommends deferring a decision on the petition until staff has completed the recall effectiveness project and is better able to evaluate the potential effectiveness of product registration cards.



United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

DATE: JAN 17 2003

TO : The Commission
Todd A. Stevenson, Secretary *WHL*

Through: W. H. DuRoss, III, General Counsel *PS*
Patricia Semple, Executive Director

FROM : Jacqueline Elder, ^{1c} Acting Assistant Executive Director,
Office of Hazard Identification and Reduction
Celestine T. Kiss, Project Manager,
Division of Human Factors, *OK*
Directorate for Engineering Sciences

SUBJECT: Petition for Rule Requiring Product Registration Cards
(CP 01-1)

This briefing package presents the staff's analysis of available data related to a petition to issue a rule requiring product registration cards (PRCs) for all children's products.

I. PETITION (Tab A)

In July 2001, the Consumer Federation of America petitioned the U.S. Consumer Product Safety Commission (CPSC) "to establish regulations governing recalls and information for consumers concerning children's products." The petition was docketed under the Consumer Product Safety Act (CPSA) (Petition No. CP 01-1).

Specifically, the petitioner requested that to facilitate recalls, manufacturers (or distributors, retailers, or importers) of products intended for children be required to provide a product registration card along with every product. The petitioner further specified that the card should:

- (1) collect only information needed to contact the purchaser (e.g., name and address or email address);
- (2) be postage-free with the postage paid by the manufacturer (or distributor, retailer, or importer);
- (3) be pre-printed with the name and model number of the product purchased; and

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reviewed or accepted by the Commission.
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CPSA 6 (b)(7) Cleared

No Mfrs/Prvtblrs or
Products Identified
☒ Excepted by Rulemaking
Firms Notified
Comments Processed. 1-17-03 *AB*

- (4) state that the information collected will only be used to advise the purchaser of a recall or other important safety information.

In addition, the petitioner requested that the rule require the manufacturer (distributor, retailer, or importer) to maintain this information for a minimum of 20 years, or the useful life of the product, whichever is longer.

II. BACKGROUND

Enhancing the effectiveness of recalls has been a challenging issue from the Commission's earliest days. Research in this area has shown that more than one approach to recalls is needed because of the many types of products under the Commission's jurisdiction and the variety of hazards presented by these products. In addition, there are a variety of ways to notify consumers of a recall and a variety of ways to assess the effectiveness of a recall.

Commission staff conducted two previous studies, "Recall Effectiveness Study," May 1978 and "Report of the Recall Effectiveness Task Force of the Consumer Product Safety Commission," August 25, 1980. The studies indicated that a number of factors affect the success of a recall.

Some of the recommendations from the "Recall Effectiveness Study" report were:

- The Commission should consider the cost effectiveness of different recall actions such as paid written warnings, audio-visual warning, etc.
- Program planning should explore all feasible methods for improving recall effectiveness in the respective program areas. New program initiatives could include:
 - Pilot program testing the concept of mandatory postage-paid recall cards on a single product or category of products.
 - A Section 16(b) rule [15 USC § 2065(b)] requiring manufacturers, distributors and retailers to record names and addresses of first purchasers for certain products or categories of products.
 - New methods for making recall information available to the public such as toll-free numbers for specific recalls.

The "Report of the Recall Effectiveness Task Force of the Consumer Product Safety Commission" also recommended that a number of steps be taken to improve recall effectiveness. A few of the recommendations were:

- To conduct a comprehensive search of the literature of recall management, marketing, communications, social psychology and any other discipline which may lend understanding to the dynamics of a corrective action;
- To develop systems to allow sufficient and routine effectiveness evaluations both within and across cases;
- To conduct short term, in-house investigations of effectiveness issues; and
- To develop a long-range research plan to investigate basic recall effectiveness questions identified by this Task Force and to be identified in the future.

While a number of these recommendations have been implemented since these studies were conducted, the nature of recalls has changed. Today, virtually all firms conducting recalls use toll-free telephone numbers and provide web site notice of recalls. The forms of notice used to announce a recall are tailored to address the risk of injury presented by the recalled product and the type of product involved in the recall. CPSC staff monitors the effectiveness of the recall by comparing the number of products produced with the number that are repaired, replaced or have the purchase price refunded.

III. DISCUSSION

A. Scope of Petition

The petitioner requested that the regulation apply "to all manufacturers (or distributors, retailers, or importers) of products intended for children." However, children's products were not defined. If interpreted broadly, this petition could encompass a wide variety of items, including items that could also be used by adults. The costs of these items vary widely from inexpensive pencils and crayons to clothes, footwear, sports equipment, and furniture worth hundreds of dollars.

B. Compliance Activities

Responsibilities of the CPSC include identifying and investigating potentially hazardous consumer products, enforcing mandatory standards and regulations, and recalling hazardous products. 15 U.S.C. §§ 2054, 2064, 1274. However, having no premarket clearance authority, the Commission can only identify hazardous products already in the marketplace. The Commission has placed responsibility for identifying, investigating and

recalling dangerous consumer products in the Office of Compliance (EXC). EXC conducts risk-based analyses to identify potentially hazardous products, classifies the hazards by degree of risk, and seeks recalls proportionate to the risk. The type of notice for any given recall is tailored to the nature of the risk of injury. The more serious the risk of injury or death, the greater the effort used to reach consumers.

The Office of Compliance has long been concerned about the effectiveness of recalls. There are two critical aspects to any recall - getting notice of a recall to those consumers who possess a recalled product; and getting those consumers to act on the recall. The most effective form of notice is direct notice to consumers who own a recalled product. [*Recall Effectiveness Study*, May 1978] Where products are sold through the Internet, catalogs or membership clubs, for example, recalling firms are able to directly notify the consumer of a recall. Similarly, when a consumer has returned a warranty card or rebate form or registered a product with the manufacturer, the manufacturer is able to notify the consumer directly of a recall.

The greater challenge is notifying consumers of a recall when the recalling firm does not know the identity of the owner of the recalled product. [*Recall Effectiveness Study*, May 1978]. The Office of Compliance has worked closely with the Office of Public Affairs over the years to explore new and innovative methods of consumer notification to reach as many owners of recalled products as possible. In announcing a recall, the Commission uses a multifaceted approach including press releases, video news releases, web site notice, pediatrician posters, in-store posters, paid advertisements in print media, (e.g. newspapers and magazines), as well as paid advertisements on radio and television. Because recalls at CPSC are primarily cooperative, the Compliance staff works with the recalling firm to achieve a mutually acceptable recall program. As stated above, the forms of notice used depend upon the nature of the risk of injury presented by the recalled product.

Despite the Commission's efforts, some consumers do not receive notice of recalls, and often this is because of the indirect method of notification used to reach them. In June 2001, the Office of Compliance recommended to the Commission that it publish an advance notice of proposed rulemaking. The ANPR would discuss initiating a rulemaking procedure to consider requiring manufacturers to include with certain products, such as countertop appliances or juvenile products, a product safety owner card to be completed by the purchaser or owner of the product. If the product were recalled, the manufacturer could provide direct notice to consumers who returned the owner card. Of course, there are other means of registering owners of products including Internet and telephonic registration.

As part of the package sent forward to the Commission, Compliance included information about a pilot product registration card study that was conducted by Toro Corporation and Mattel, Inc. In this study, Toro included four specially designed product registration cards with two different models of electric leaf blowers. Mattel included a special product registration card with one of its more expensive motorized ride-on cars. Toro reported to CPSC that its "results clearly show that taking the market research off the card increases the return rate." (See **Tab B**) Because this was only a pilot study the results cannot be generalized to all products and therefore, more research into types and costs of products that could potentially benefit from product registration cards needs to be conducted. Mattel has not done anything further with product registration cards with their products. Toro conducted another pilot study in the Spring 2002, but has not provided the results to the CPSC as of this briefing package.

C. Human Factors Evaluation (Tab C)

The effectiveness of a product registration card in obtaining a desired response first relies on the message being noticed, attended to, and understood by the viewer. It seems likely that proper design and placement of the cards with the products could address these issues. However, consumers' repeated exposure to these cards could potentially result in them attracting less and less attention over time, as is often the case with warning labels. The extent to which this would apply to PRCs is unclear at this time.

Even the best-designed PRCs are of no use if consumers do not choose to fill out and return the cards. Based on social influence research, Human Factors staff concluded that people tend to comply with requests made by those they like and by those in perceived positions of authority. Consumers who are familiar with CPSC and have a positive opinion of the Agency would be more likely to return a PRC that appears to come from or is in some way "approved" by CPSC. In addition, consumers will be more likely to return a PRC if they believe the sender is genuinely trying to help them. Hence, PRCs with heavy emphasis on the fact that they are intended to help consumers identify hazardous products are more likely to be returned.

Two of the most important factors in determining the extent to which people will be motivated to comply with warnings are the cost of compliance and the cost of noncompliance. In the context of PRCs, the cost of compliance may be viewed as the perceived cost of filling out and returning the cards. This cost may be in the form of money (e.g., stamps), but can also include other factors such as time, convenience, and effort. The cost of noncompliance may be viewed as the consumer's perceived increase in risk associated with not filling out and returning the cards. Consumers, however, may view this as a minor inconvenience since

failing to fill out the cards does not necessarily mean the consumer will not find out about a recall. In the worst-case scenario, in which the consumer does not return the card and the product is later recalled, the consumer is merely in the same situation as would be the case if a PRC did not accompany the product. Consumers could still find out about the recall from CPSC's website, television, radio, friends, etc. Therefore, the perceived cost of not returning the cards may be very small.

To motivate people to behave in a particular way, the perceived cost of compliance must be less than the perceived cost of noncompliance. Possible ways to minimize the perceived cost of compliance and to improve the likelihood that consumers will return the card properly filled out include designing the card so it requires as little time and effort as possible on the part of the consumer, providing pre-paid postage, and eliminating questions that could be perceived as an invasion of consumers' privacy. Additional research on consumer perceptions and attitudes regarding PRCs would be beneficial.

Warning research also indicates that the perceived hazard associated with a product or situation affects the consumer's motivation to read and comply with warnings. The familiarity of the product can play a role in this perception. Applying this to PRCs, consumers would be expected to be more likely to return a PRC associated with a product that is unfamiliar to them or that they view as potentially hazardous. There is also some question as to how consumers generally perceive recalls in terms of severity. Consumers who believe most recalls are of minimal concern may be unlikely to return a PRC, especially if the product does not seem especially hazardous. On the other hand, consumers who believe recalls that are not followed will result in potentially severe consequences are more likely to return a PRC. Human Factors staff believes that further research into consumer perceptions of safety recalls could be very useful in determining the effectiveness of PRCs.

D. Further Research

As discussed above, there are a number of issues that need further research in order to assess the potential benefits of product registration cards to recall effectiveness. Thus, in Fiscal Year 2002, CPSC began a project that is using a multiple stage strategy to evaluate consumers' behaviors and the whole recall process in order to understand the effectiveness of a recall. A contractor is conducting a literature search and evaluation on consumers' behaviors as they relate to recalls by examining areas such as compliant behavior, communication, and warnings. At the same time, CPSC staff is evaluating the Office of Compliance's recall database to assess the effectiveness of previous recalls. The results of these two phases of the project will then be evaluated to determine what further research is needed. The goal of this research effort is to better understand what strategies can be used to reach the most people and to

motivate those people to respond appropriately to eliminate the identified hazard.

IV. PUBLIC COMMENTS (Tab D)

On August 1, 2001, a notice was published in the *Federal Register* (Vol. 66, No. 148, page 39737) soliciting public comment on the petition. As of the closing date, October 1, 2001, 28 comments were received: 21 opposed the petition and 7 supported the petition. Below is staff's response to the comments. The numbers in parentheses after each comment correspond to the number assigned to the commenter by the Office of the Secretary.

Legal Authority

Comment: A number of the comments pertained to the CPSC's legal authority to issue this rule. (CA 01-5-8; 12; 26; 27)

Response: The Office of the General Counsel (OGC) addresses this issue in its legal memo.

Scope of Petition

Comment: The petition requests that the Commission establish a rule to "provide Consumer Safety Registration Cards to purchasers of children's products." A number of the comments indicated that children's products are not defined in the petition and therefore, the scope of the petition could include an enormous array of products that commenters believe would not benefit from this rule. Several comments requested the scope be better defined and/or exemptions be made for items that have low prices, short useful life, and little risk of causing injury. (CA 01-5-1; 2; 3; 4; 5; 6; 7; 8; 10; 12; 13; 14; 15; 19; 20; 22; 24; 25; 26; 27)

Response: CPSC staff agrees that the scope of the petition needs to be precisely defined. Staff believes there are a number of children's products for which registration cards will likely not be filled out and returned because consumers view the cost of their time as more important than the benefit of filling out the card. In addition, the over-use of product registration cards or consumers' repeated exposure to these cards could result in the cards attracting reduced attention over time. Therefore, staff believes that more research should be conducted to determine the scope of products for which PRCs would be most effective.

Product Registration Card Characteristics

Comment: Several comments requested that the rule require that the product registration cards: 1) collect only necessary information for contacting the consumer via email or postal address; 2) be postage paid; 3) have the name and model number preprinted; and 4) state that the information will only be used

in case of a recall or safety problem. (CA01-5-11; 16; 23; 28) Another commenter stated that current warranty cards are viewed as marketing cards but they could be changed to let consumers know which information is needed and which information is optional. (CA 01-5-19)

Response: Staff agrees that the characteristics of current cards may make them unlikely to be returned by consumers. However, it may be possible to modify current cards to collect the desired information. Consumers are more likely to complete and return PRCs as the perceived cost of doing so decreases. Possible ways of accomplishing this include making PRCs more concise, having the postage associated with returning the PRC pre-paid, and eliminating questions that are not safety related or that may be perceived by the consumer as intrusive or an invasion of privacy (e.g., household income, recent purchases). Further research into consumer responses to PRCs would be beneficial to help determine other characteristics of PRCs that would be influential and which of those are likely to have the greatest influence on consumer behavior. Since staff believes consumers are more likely to complete and return a PRC as the perceived seriousness or severity of an injury related to the product increases, it may also be possible to include language on a PRC that would affect this perception.

Total Cost for Including Cards

Comment: A majority of the comments stated that the overall cost to prepare, provide, and preserve the registration cards and a data base would be enormous. (CA 01-5-1; 2; 3; 4; 5; 6; 7; 8; 10; 12; 13; 14; 15; 19; 20; 22; 24; 25; 26; 27) Some comments provided estimates that ranged from \$175,000 annually to \$25 billion for the cards and database. (CA 01-5-2; 5; 12; 14; 18; 22; 26) Two comments, one from a retailer and one from a manufacturer, indicated that they would be put out of business because of the extra cost of PRCs and the database. (CA 01-5-3; 13)

Response: CPSC Economic Analysis staff estimates the cost to manufacturers would range from \$0.32 to \$0.80 per card. (Tab F) This cost accounts for the design and production of the card, the physical insertion of the card in the package, the postage of the cards returned by consumers, and record keeping for the returned cards. Administrative or overhead costs that are associated with the cards are not included in these estimates.

Maintain Database for 20 years

Comment: A majority of comments objected to the petitioner's request for maintaining a database of purchasers' information for 20 years. The commenters stated that 20 years was excessive

especially when many of their items would have very short useful lives and consumers move too much for the information to be accurate. (CA 01-5-1; 2; 3; 4; 5; 6; 7; 8; 10; 12; 13; 14; 15; 19; 20; 22; 24; 25; 26; 27)

Response: Maintaining a database for 20 years may be excessive, however, it would depend on the particular product. Further research into what would be a reasonable time frame for maintaining the information is needed.

Benefits

Comment: The commenters that supported the petition did so because they believe the current recall response rate is too low and that direct consumer notification will increase the effectiveness of recalls. (CA 01-5-9; 11; 16; 21; 23; 28) The commenters that opposed the petition did so because they believe the number of consumers who will actually return the cards will be substantially less than the number of those who do not return them, and that current means of notifying the public of recalls are adequate. In addition, these comments question the true safety benefit of these cards compared to the expense to include them with all children's products. (CA 01-5-1; 2; 3; 4; 5; 6; 7; 8; 10; 12; 13; 14; 15; 19; 20; 22; 24; 25; 26; 27)

Response: Staff agrees with both positions to a degree. Staff believes that the safety benefit of registration cards may be closely related to the type of product covered. Even the best-designed PRCs are of no use if people choose not to fill out and return the cards. Complying with a warning, or in this case, filling out a PRC has a cost associated with it, whether that cost is in the form of money, time, convenience, or effort. To motivate people to behave in a particular way, the perceived cost of compliance must be less than the perceived cost of noncompliance. In order for registration cards to have maximum safety benefit, they need to be carefully designed to elicit the appropriate response (i.e., filling out and returning the card) from the consumer. Research has shown that direct notification does increase successful recalls. However, requiring registration cards with all children's products, as the petition requests, may desensitize consumers to the cards. As part of the current recall effectiveness project, staff will be evaluating this issue in conjunction with the scope of products for which registration cards might be most effective.

Most Products Intended for Children Are Safe

Comment: One trade association asserted that the benefits of the rule requested in response to the petition appear to be extremely limited. Most products intended for children are safe and are not involved in any form of a safety recall. The benefits, if any, of the rule requested would be limited to the small number of products where a safety issue is discovered after the product is released to the public. (CA 01-5-15)

Response: The staff agrees that the benefits of PRCs will be limited to those products that are recalled, and that products recalled are a small portion of all products produced. Unfortunately, we cannot identify the products that will be recalled in advance. However, it may be possible to minimize the costs, without much of an adverse impact on the benefits, if the scope could be limited to product categories that are more frequently involved in recalls or for which consumers are likely to return the PRCs.

Effect on International Trade

Comment: One manufacturer said that before a product that was originally packaged for sale overseas could be sold in this country, a PRC would have to be inserted in, or attached to, the package. This would increase the cost of redirecting or diverting product shipments. (CA 01-5-18)

Response: Staff accepts the assertion that the proposal could increase the cost of diverting or redirecting shipments of products originally packaged for sale in other countries for sale in this country. However, we do not have any information on how many products this would apply to or the extent of the cost increase.

Interfere with Other Safety Information

Comment: The majority of comments from the clothing industry expressed concern that the PRC would interfere with other safety information that the garments already carry on hang tags. (CA 01-5-1; 4; 5; 6; 7; 10; 14; 20; 22)

Response: Staff believes there are likely to be ways of designing PRCs to minimize the extent to which they interfere with the other safety information already present on or in consumer products. This is an issue that needs to be considered further.

V. OPTIONS AVAILABLE TO COMMISSION

A. Grant Petition

If the Commission preliminarily concludes that a mandatory rule that requires product registration cards may be reasonably required to implement the CPSA, then the Commission could grant the petition and initiate rulemaking.

B. Deny Petition

If the Commission preliminarily concludes that it lacks sufficient information to show that a mandatory rule requiring product registration cards for children's products is required to implement the CPSA, the Commission could deny the petition.

C. Defer Decision on Petition

If the Commission preliminarily concludes that additional information is necessary to determine that a mandatory rule requiring product registration cards for children's products may be required to implement the CPSA, the Commission could defer the decision on the petition until that information is available.

VI. STAFF CONCLUSIONS AND RECOMMENDATION

Based on past work in the area of recall effectiveness, the staff concludes that more than one approach to recalls is needed because of the many types of products and hazards. Nevertheless, research indicates that direct notification is the most effective form of notice and product registration cards are one way of facilitating that notice. However, even the best-designed PRCs have limitations; people may choose not to fill them out and return them, the registered product may have been sold/given to another person; or the registered owner may have moved.

Firms use up-to-date technology, such as the Internet and toll free phone numbers, for notifying the public about recalls. These forms of notice and other recall strategies that could effectively reach owners of both new and second-hand products need to be more fully understood. Therefore, staff has recently begun a project that is using a multiple stage strategy to evaluate consumers' behaviors and the whole recall process. The evaluation of PRCs is one part of this project.

Based on this information, staff recommends deferring the petition until staff has completed the recall effectiveness project that is currently underway and is better able to evaluate the potential effectiveness of product registration cards as well as other forms of notice. Staff anticipates that the project will be completed in Fiscal Year 2004.

REFERENCES

"Recall Effectiveness Study", U.S. Consumer Product Safety Commission Office of Strategic Planning, Washington, D.C., May 1978.

"Report of the Recall Effectiveness Task Force of the Consumer Product Safety Commission", U.S. Consumer Product Safety Commission, Washington, D.C., August 25, 1980.

Tab A

Petition CP 01-1 from the Consumer Federation of America to establish regulations governing recalls and information for consumers concerning children's products, June 21, 2001.

CP01-1



Consumer Federation of America

June 21, 2001

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 502
Bethesda, MD 20814

Enclosed for filing please find a petition being submitted by Consumer Federation of America concerning Recalls of Products Intended for Children.

Thank you for your attention to this document.

Sincerely,


Mary Ellen R. Fise
General Counsel

**In the United States of America
Before the Consumer Product Safety Commission**

**In the Matter of the Petition of
Consumer Federation of America
To Establish Regulations
Governing Recalls and Information
For Consumers Concerning Children's
Products**

No. CP 01-1

Pursuant to the Administrative Procedures Act, 5 U.S.C. section 553 (e) and regulations of the Consumer Product Safety Commission (CPSC), 16 C.F.R. sections 1051 and 1500.201, Consumer Federation of America hereby petitions the CPSC to establish regulations under section 10 of the Federal Hazardous Substances Act, 15 U.S.C. section 1269, governing the recall of products intended for children. Such regulations would help provide for the efficient enforcement of the FHSA and specifically sections 15 (a) (b) and (c), 15 U.S.C. section 1274.

I.

Interest of Petitioner

This petition is brought Consumer Federation of America (CFA). CFA is the nation's largest consumer advocacy organization representing over 280 state, local, and national consumer organizations and over 50 million consumers. CFA has been a strong advocate of protections for children, including CPSC standards, bans, and recalls affecting products intended for children. For the past 20 months, CFA's sister organization Consumer Federation of America Foundation has been in the process of developing a comprehensive Internet website focusing on children's safety and health. As part of that web development, CFAF reviewed all CPSC recalls involving products intended for children.

II.

Need for Regulations

It is clear that additional measures are needed to improve recall effectiveness. In Fiscal Year (FY) 1996, CPSC recalls experienced an 18% return rate. In FY 1997, the return rate fell slightly to 16%.¹ This petition seeks three regulations to assist the agency in the effective

¹ These are the most recent data we have on recall effectiveness. While the Fast Track recall program has led to an increase in return rates to 60% in FY 1996 and 53% in FY97, it primarily takes care of product retrieval in the early parts of the distribution channel and not when the product is in the hands of consumers. The overall return percents (16% in 1997 and 18% in

enforcement of the Federal Hazardous Substances Act provisions affecting recalls of children's products. See sections 10 and 15(a) (b) and (c) of the FHSA. The need for each of these regulations is discussed below.

A) Indefinite Availability of Recall Remedy

A recent study by CFA of recall contact numbers provided by companies subject to CPSC corrective action plans found a disturbing number of companies that fail to honor their recalls.

On June 21, 2001, Consumer Federation of America Foundation, is launching a new comprehensive child safety and health website, www.SafeChild.net, intended for parents, professionals who work with children, and advocates who work to protect children. This website includes all recalls of products intended for children from 1990 to present. In the cases of products that have a long useful life (and typically a higher price tag), we recognized that consumers may have products that were recalled before 1990 in their homes and therefore have also included older recall information on those products. These include: cribs, bunk beds, playground equipment, and all terrain vehicles. The website also contains some limited recall information on some products that, while not intended for children, promote safe environments for children (such as smoke alarms/detectors).

In preparation for listing all of these recalls on our website, we contacted (and are still contacting)² the manufacturers, importers, distributors or retailers designated in the CPSC press release by calling the phone number listed in the release. These are the numbers that CPSC and the recalling company advise consumers to call to get more information about the recall remedy. We wanted to make certain that the information we intended to include for visitors to our website was accurate. Thus, we did not set out in this endeavor to prepare a report on recall contact information. However, a few days into calling we realized a disturbing pattern – that not all the contact information contained in the CPSC Press Releases was accurate and not all companies were continuing to honor recalls. When we first recognized a pattern, we began to keep notes on all contacts that were in error or where we talked to a company representative who indicated that they were no longer honoring the recall.

As a result of our recall checks, we have identified 108 companies, listed in CPSC Press Releases and contained on the CPSC website, that fail to honor their recalls. These failures fall into six categories:

Wrong Number: (62 cases) Typically this was a recording such as "your call cannot be completed as dialed" or "the number is invalid" or "this number is no longer in service." This category also includes calls answered by a person (including personal residences) or company that was clearly not the company listed in the recall.

Fax Machine or Pager: (7 cases) Here the telephone number called resulted in a fax machine beeping noise or pager beep.

Disconnected: (13 cases) These numbers resulted in a recording saying that the number was disconnected or no longer in service.

1996) are more appropriate to examine when discussing getting hazardous products out of consumers' homes.

² As of June 21, 2001 we are still contacting the companies involved in toy recalls. If we learn of additional cases where companies fail to honor a recall we will forward that information to CPSC.

Always Busy: (2 cases) In these cases the phone number was always busy (during multiple attempts).

No Parts Available: (6 cases) In this category, the call was answered but in requesting information about the recall, we were told that the company was no longer honoring the recall because parts were not available. In one case the company said that they didn't make the product any longer and therefore were not honoring the recall.

Unsure of Continued Participation: (18 cases) For these calls, the company representative either did not know of the recall, claimed not to be part of any recall, indicated that the recall would only be honored for six years, or would be honored for six years if parts were still available. In one case the company told us that they had sent a letter to CPSC requesting that the case be closed because they had received very few returns. In many of the cases in this category we talked to several different people in the company.

See Appendix A for a complete list of the companies, recalls and responses to our CPSC product recall information checks.³

To determine whether there was some undisclosed time limit on recalls that CPSC was negotiating with companies subject to recalls, we twice asked senior CPSC Compliance staff if there was any limit on how long a CPSC recall is in effect. Both times we were told unequivocally that recalls should last "indefinitely."⁴ While we appreciate the CPSC staff's determination to provide recall remedies indefinitely, we believe that a regulation codifying this position is needed.

We also ask CPSC Compliance Staff to contact the companies identified in this report and insist that they honor the recall. If CPSC learns that the company is not in business, we also request that the agency alert consumers, in addition to our doing so, of the dangers associated with these products and of the need to throw them away.

B) Manufacturer Identity and Contact Information

The petition seeks a regulation requiring that the name, address and telephone number of the manufacturer, distributor, retailer, or importer or the name, telephone number and web address of the manufacturer, distributor, retailer, or importer (provided certain conditions are met) be permanently on the product or product part.

Currently only children's products that the agency has declared to be hazardous substances (generally those that have an identified electrical, mechanical, or thermal hazard), are required to have the "name and place of business of the manufacturer, packer, distributor or

³ In addition to the results listed in the chart in Appendix A, it should be noted that we often had difficulty getting through to companies not listed in this report. We had to phone these companies many times on several different days until the phone was answered. While not deemed a failure in this study, it most likely would have been had a consumer been contacting the company. After two or three tries, we suspect that most people would have given up.

⁴ M. Schoem, public comments at the International Consumer Product Health and Safety Organization Conference, February, 2001; and telephone conversation with A. Schoem.

seller" only on the label of the product.⁵ If such products do not have this information they are "misbranded hazardous substances" by definition. See Section 2(p)(1) of the FHSA, 15 U.S.C. 1261. Introduction into commerce of a misbranded hazardous substance is prohibited by the FHSA (Section 4(a), 15 U.S.C. section 1263).

CFA seeks this regulation to improve and enhance:

1. Consumers' ability to determine if they have the product that is subject to the recall

Consumers need to know whether the recall being announced involves a product they may own. If the consumer has forgotten the name of the manufacture (or never learned of it in the first place), which is entirely possible and likely as many consumer products have long use periods, the success of the recall will hinge on whether the consumer can simply examine the product to determine if the product is subject to the recall.

2. Consumers' ability to participate in the recall

With the manufacturer, distributor, retailer or importer's contact information on the product—including name, address and telephone number, or name, telephone number and web address—consumers will be in a better position to participate in the recall. Consumers who hear about recalls from friends or acquaintances (who may not have the contact information) or who may hear about the recall from a radio or TV report, at a time when they are unable to take down the contact information, will still be able to contact the manufacturer to learn how to receive the recall remedy. If all children's products contain this information, parents and others will feel empowered every time a recall is announced by CPSC because they will know that all they have to do is look at the product and call the telephone number or use the mail or web address to find out what action they should take.

3. CPSC's ability to investigate and recall unsafe products

CPSC needs to be able to identify the manufacturer (distributor, retailer, or importer) in order to begin an effective investigation and possible recall action, CPSC staff have indicated that there have been cases where a product was not recalled, despite a hazard determination by staff, because they could not identify the manufacturer.

There have been at least two cases where a child has died on a product with a hazardous design and the manufacturer's name was not on the product.⁶ It is our understanding that CPSC has not recalled these two products because they are unable to identify the manufacturer. Coincidentally, both products are baby changing tables. From the investigation

⁵ "Label" is defined by the statute as writing on the immediate container or if the article is unpackaged or is not packaged in an immediate container, then the information must be on the article or a tag affixed to the product. FHSA, section 2(n), 15 U.S.C. section 1261.

⁶ In the late 1980s CFA learned of a defectively designed play yard that had caused the death of a child and asked CPSC why the product had not been recalled. CPSC Compliance staff told us it was because CPSC was unable to identify the manufacturer because there were no markings on the product. From our vantage point it is very difficult to determine how many other cases there might be of hazardous products never recalled because of lack of identifying information on the product.

In the first case, Logan Vash, a ten-month old boy was fatally injured on June 8, 1999 when his neck became trapped between the frame of a changing table and a light weight shelf. The shelf was resting on clip supports on the frame. Logan crawled on to the first shelf and then stood up. His head lifted the second shelf off of the supports, and he put his head through the opening. But when his head went over the frame member, his neck came down on the ¾ inch frame edge. The shelf, which acted like a hinged cover, came down on the back of his head and neck and he died after approximately two minutes in this position.^{7 8}

In the second case, a 16 month old boy died on March 5, 1989 of asphyxiation by hanging when he became entrapped in an opening in the back of his changing table. The boy and his twin brother were active toddlers and had previously climbed the open shelves of the changing table. The changing table had been turned around to prevent them from climbing the table. The backside of the table, facing outward into the room had two six inch high gaps in the woodwork/railing. When the victim was found he was almost in an upright position with his feet just off the ground. His head was wedged with the chin over the railing that was 21 inches off the floor. He was looking directly back towards the wall behind the furniture. When first found, the father stated that he thought the subject was just standing there.^{9 10} The investigation reports states: " There was no brand name or serial number on the furniture."

To determine the ease of purchasing products without a manufacturer's (or distributor, retailer or importer) name on the product, CFA staff visited four stores between June 14-19, 2001 and was able to purchase, in all four stores, either new or second hand products for children that have no manufacturer or other name on the product. These include: three dolls, one battery-operated toy car, pinwheels, a bag of rattles and toys trucks, and one used changing table.¹¹ We are not alleging safety problems per se with these products. However, should a safety hazard be identified ever with these products, it would be impossible to determine who made them and who should be responsible for carrying out a recall.

The incidents cited, as well as the ready availability of unmarked products, strongly supports a change in existing regulations. Congress could not have intended to give CPSC recall authority and then expect that manufacturers would be allowed to thwart or circumvent implementation of that authority by failing to place the company's name on the product.

⁷ This description is taken from the CPSC Epidemiologic Report, number 990914CAA3479 (see Appendix B).

⁸ Logan Vash's mother has requested that the ASTM voluntary standard for changing tables (currently being drafted) address movement of shelves in changing tables to prevent such entrapment incidents.

⁹ This description is taken from Multnomah County Medical Examiner 's Office Report Form, Circumstances description, p.4 (see Appendix C).

¹⁰ The draft ATSM voluntary standard on changing table contains a test that would not allow such entrapment spaces in changing tables.

¹¹ We also found a battery-operated toy guitar that had one very small paper label (about to come off the product) with the words "Toy Wonders" stuck in the inside bottom of the battery compartment. There were no other marking anywhere on the product. There was also no manufacturer's name on the box so it was difficult to determine whether Toy Wonders is the manufacturer.

C) Direct-to-Consumer Notification

Another means of increasing the effectiveness of consumer product recalls is direct-to-consumer notification of the recall. By identifying consumers who purchased the product, manufacturers are able to contact them directly to communicate about a safety recall.¹² This currently occurs on a very limited basis and mechanisms to obtain consumer information that would facilitate such notification are inadequate and inappropriate.¹³

To better assess the adequacy of consumer warranty or registration cards included with new consumer products, in 1999, CFA collected a sample of 17 cards that were included with new products. From this sample, we learned the following about product registration cards:

- ❑ **Manufacturers do not disclose that these cards might (or could be) be used to give consumers notice of recalls.** Of the 17 cards we reviewed, only one manufacturer suggested that this might be a use of the registration card.¹⁴ There is no effort made to inform consumers that the return of the card could enable them to receive important safety recall information about their product (should that need arise).¹⁵
- ❑ **Cards used appear primarily to be marketing and consumer data collection tools.** Every registration card collected by CFA asked numerous questions of the consumer, over and above name, address and model number (or the "basics" needed for safety recall or warranty reasons). It was not uncommon for companies to ask 20 or more questions of

¹² The suggestion of requirements for direct-to-consumer notification of product recalls is not new. See, Recall Procedures for Unsafe Products Sold to the Public, Report by the Committee on Consumer Policy, Organisation for Economic Cooperation and Development ["(d)irect notification of consumers is preferable, although this does not necessarily preclude the use of media, at 15]; and "Recall Effectiveness and the Communications Clutter, Harland W. Warner, Public Relations Quarterly, Fall 1980, 21 ["The government might consider developing a uniform recall communications program to be part of all warranty information." at 23]

¹³ In fact, the failure of manufacturers to learn who bought their products, and hence their inability to contact buyers other than through commercial advertising, has been listed as a reason for CPSC's low recall return rate. See "Recalls and the Remediation of Hazardous or Defective Consumer Products: The Experience of the Consumer Product Safety Commission and the National Highway Traffic Safety Administration," Richard J. Tobin, *The Journal of Consumer Affairs*, Winter, 1982, volume 16, no.2, 278, at 295.

¹⁴ The Sharp Electronics Corporation card stated: "We will keep your model number, serial number and date of purchase on file, and help you access that information in case of loss, damage or theft. This will also enable us to contact you in the unlikely event that any adjustments or modifications are ever required for your oven."

¹⁵ The drawbacks of using the traditional warranty or registration card have been described as follows: "Sophisticated consumers are increasingly aware that a warranty applies to a purchased product whether or not they fill out and return the manufacturer's warranty card....Another reason suggested for the frequent discarding of warranty cards is that their design often makes it patently obvious to knowing buyers that the cards are intended more to provide manufacturer with market research data than to assure owner registration." (Editor note) "Identification of Products for Potential Recall," Gordon H. Robertson, in Managing Product Recalls, edited by E. Patrick McGuire, A Conference Report from The Conference Board, 1974.

- ❑ consumers.¹⁶ It is clear from the type and number of questions being asked, that these cards are intended for marketing research purposes.
- ❑ **Postage is not prepaid on most registration cards.**
In our sample, 76% of the cards required that the consumer affix proper postage.
- ❑ **Consumer privacy is generally not protected by companies using registration cards.**
Only two companies' cards that we examined stated that they would not release the consumer's information to anyone. On ten cards (representing nine companies), the consumer was required to affirmatively opt out of having their name disclosed. Five companies made no statement at all regarding privacy or the use of the information, meaning that the company was free to sell or otherwise use that personal information. Protection of consumer privacy is a major concern to consumers and failure to protect personally identifiable information is an incentive for consumers not to participate in any registration program.

It is clear that the current warranty/marketing consumer registration cards are not appropriate for the Direct-to-Consumer notification regulation sought by this petition. Providing Consumer Safety Registration Cards that are postage-paid and pre-labeled with product name and model number and that clearly convey use only in the event of a safety recall or hazard and include privacy protections would significantly enhance consumer participation. Being directly and personally notified and /or reminded of a hazard that could hurt, or even kill, their baby will, we contend, be very effective in enhancing recall participation by parents and others.

III.

Action Requested

For the reasons enumerated above, the Petitioner requests that the Consumer Product Safety Commission issue regulations, under the authority granted it in section 10 (a) of the Federal Hazardous Substances Act, 15 U.S.C. 1269, to specify that recalls last indefinitely, to require manufacturer's name and contact information on children's products, and to provide Consumer Safety Registration Cards to purchasers of children's products.

Specifically, the Petitioner requests that CPSC issue regulations, applicable to all manufacturers, distributor, retailer, or importer of products intended for children, that:

- A) specify that the remedy provided by the manufacturer, distributor, importer or retailer, (to repair, replace or refund) as part of the recalls carried out under Section 15 of the FHSA and section 15 of the Consumer Product Safety Act (CPSA)¹⁷ with respect to products intended

¹⁶ 65% of our sample asked 20 or more questions, including two companies that asked 31 and 33 questions on their cards.

¹⁷ We specifically include the Consumer Product Safety Act (CPSA) reference here because of the Commission's previous decision to address toys, children's articles and furniture bearing lead-based paint under the CPSA and not the FHSA. See 16 C.F.R. section 1145.2.

- B) for children be in effect indefinitely or as long as the manufacturer, distributor, dealer, retailer, or importer, is in business. These obligations shall explicitly pass to the companies that acquire such a manufacturer, distributor, dealer, retailer, or importer who previously conducted a recall as described in section 15 of the FHSA and section 15 of the CPSA. In addition when a company, that has previously conducted a recall of a children's product, goes out of business, it shall file a report with CPSC notifying the agency of its business status. When a company changes its telephone number or any other contact information, it must report these changes to CPSC so that the new contact information can be made available to the public.¹⁸
- B) require that the manufacturer (or distributor, dealer, retailer, or importer) have the following information permanently on every product and product part (if the individual product part could be used separately by a consumer) intended for use by children:
- 1) name, address and telephone number; or
 - 2) name, telephone number, and web address.

Should the manufacturer (or distributor, retailer, or importer) choose to utilize a web address it must be one that has a recall section or button linking to a recall section, clearly identified on the home page of the website. Products (or product parts) intended for children that are smaller than one square inch in measurement, would be exempt from this requirement. However, if the Commission finds that products or product parts intended for children that are less than one inch square require manufacturer (or distributor, retailer, or importer) information because of a high frequency of recall or because of the hazardous nature of the product or product part, it may promulgate amendments to these regulations to address those products or product parts.

In addition to the name and contact information specified above, manufacturers (or distributor, retailer, or importers) shall have a means of identifying the product manufacturing period (if applicable) that can be placed on the product for identification purposes. If the manufacturer (or distributor, retailer, or importer) does not utilize an identifying mark specifying production period, then the Commission shall have the broad authority to recall all products in that category (regardless of batch or production period).

- C) require that manufacturers (or distributors, retailers, or importers) of products intended for children provide along with every product a Consumer Safety Registration Card that allows the purchaser to register information, through the mail or electronically. Such information will allow the manufacturer to contact the purchaser in the event of a recall or potential product safety hazard. Such registration should specify that the Consumer Safety Registration Card:
- 1) collect only that information needed to contact the purchaser (name and address or e-mail address). No other information may be collected.
 - 2) Be postage-paid by the manufacturer (or distributor, retailer, or importer).
 - 3) Be pre-labeled by the manufacturer (or distributor, retailer, or importer) with the name and model number of the product purchased.
 - 4) Contain a statement that the information collected will be used only in the event that the manufacturer needs to contact the purchaser to convey recall or other important safety information.

¹⁸ We also ask CPSC Compliance Staff to contact the companies identified in this report and insist that they honor the recall. If CPSC learns that the company is not in business, we also request that the agency alert consumers, in addition to our doing so, of the dangers associated with these products and of the need to throw them away.

Manufacturers (or distributors, retailers, or importers) affected by this requirement may not sell, rent, share or otherwise disclose any information collected in connection with this provision and shall take reasonable measures to assure that the information collected is not used for any purpose other than alerting the purchaser of a product recall or other potential product safety hazard associated with the product. This information shall be maintained by the manufacturer (or distributor, retailer, or importer) for a minimum of 20 years, or the useful life of the product, whichever is longer. If a product is recalled by CPSC or the manufacturer (or distributors, retailers, or importers) determines that there is or may be a product safety problem associated with the product it shall use the information supplied by purchaser to contact all purchasers who have returned the registration cards to alert them to the recall remedy and the appropriate steps to take to correct the problem, or replace the product. CPSC shall require manufacturers (or distributors, retailers, or importers) to provide reports on its return rate with respect to Consumer Safety Registration Cards, as part of its reporting on the effectiveness of its recall (corrective action) program.

Respectfully submitted,



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APPENDIX A



Consumer Federation of America

**Report
on
CPSC PRODUCT RECALL INFORMATION**

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**Consumer Federation of America
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June 21, 2001



This report examines the contact information provided in U.S. Consumer Product Safety Commission (CPSC) Press Releases announcing recalls of hazardous products intended for children.¹ The report identifies companies that fail to honor safety recalls and outlines regulation needed by CPSC to rectify this problem. This report is being released in conjunction with a petition by Consumer Federation of America (CFA) to CPSC that requests new recall regulations and enhanced enforcement efforts.

Background

On June 21, 2001, Consumer Federation of America Foundation is launching a new comprehensive child safety and health website, www.SafeChild.net, intended for parents, professionals who work with children, and advocates who work to protect children. This website will include all recalls of products intended for children from 1990 to present. Since consumers may have some products in their homes that have a long useful life (and typically a higher price tag) and that were recalled before 1990, the website includes older recall information on these products. These include: cribs, bunk beds, playground equipment, and all terrain vehicles. The website also contains some limited recall information on some products that, while not intended for children, promote safe environments for children (such as smoke alarms/detectors).

In preparation for listing all of these recalls on the SafeChild.net website, we contacted (and are still contacting)² the manufacturers, importers, distributors or retailers designated in the CPSC press release by calling the phone number listed in the release. These are the numbers that CPSC and the recalling company advise consumers to call to get more information about the recall remedy. We wanted to make certain that the information we intended to include for visitors to our website was accurate. Thus, we did not set out in this endeavor to prepare a report on recall contact information. However, a few days into calling we realized a disturbing pattern – that not all the contact information contained in the CPSC Press Releases was accurate and not all companies were continuing to honor recalls. When we first recognized a pattern, we began to keep notes on all contacts that were in error or where we talked to a company representative who indicated that they were no longer honoring the recall.

¹ We also contacted companies listed on the National Highway Traffic Safety Administration (NHTSA) website that have recalled child restraints (car seats).

² As of June 21, 2001 we are still contacting the companies involved in toy recalls. If we learn of additional cases where companies fail to honor a recall we will forward that information to CPSC.

On the SafeChild.net website, visitors can obtain recall information in three places. Each product discussed in the Parents section under the Super Category of *Products for Children* contains recall information as the last section of the product write-up. Recall information for products not intended for children, but which could affect a child's safety, is contained at the end of the articles on those topics (for example: smoke alarms/detectors). Finally, the Parents section of the website contains a category entitled *Recalls* where visitors can click on a product category and are taken to the product recalls for that product. In the near future this part of the website also will allow users to search for recalls by year. For each recall listed we include information on: Which Ones; Problem; What to Do; and the Recall Date. In the case of National Highway Traffic Safety Administration (NHTSA) recalls, we include the NHTSA number.

What We Found

To confirm recall information we placed calls to companies to check on a total of 595 recalls. Of these, we identified 108 cases involving 100 companies, listed in CPSC Press Releases and on the CPSC website, that fail to honor their recalls.³ Thus, 18% of the recalls we checked had faulty contact information or otherwise failed to honor their recall. In looking at the age of recalls not honored, 4% were recalls occurring in the 1980s, 61% were recalls occurring between 1990-1995, and 35% were recalls from the years 1996-2000. These failures fall into six categories:

Wrong Number: (62 cases) Typically this was a recording such as "your call cannot be completed as dialed" or "the number is invalid" or "this number is no longer in service." This category also includes calls answered by a person (including personal residences) or company that was clearly not the company listed in the recall.

Fax Machine or Pager: (7 cases) Here the telephone number called resulted in a fax machine beeping noise or pager beep.

Disconnected: (13 cases) These numbers resulted in a recording saying that the number was disconnected or no longer in service.

³ There were eight companies that each had two different recalls at different time periods where their contact information was inadequate in both cases. Two of these companies had different numbers for the different recalls and both numbers were deficient.

Always Busy: (2 cases) In these cases the phone number was always busy (during multiple attempts).

No Parts Available: (6 cases) In this category the call was answered, but in requesting information about the recall, we were told that the company was no longer honoring the recall because parts were not available. In one case the company said that they didn't make the product any longer and therefore were not honoring the recall.

Unsure of Continued Participation: (18 cases) For these calls, the company representative either did not know of the recall, claimed not to be part of any recall, indicated that the recall would only be honored for six years, or would be honored for six years if parts were still available. In one case the company told us that they had sent a letter to CPSC requesting that the case be closed because they had received very few returns. In many of the cases in this category we talked to several different people in the company.

See **Appendix A** for a complete list of the companies, recalls and responses to our CPSC product recall information checks.⁴

How Long Should a Recall be Honored?

To determine whether there was some undisclosed time limit on recalls that CPSC was negotiating with companies subject to recalls, we twice asked senior CPSC Compliance staff if there was any limit on how long a CPSC recall is in effect. Both times we were told unequivocally that recalls should last "indefinitely."⁵

⁴ In addition to the results listed in the chart in Appendix A, it should be noted that we often had difficulty getting through to companies not listed in this report. We had to phone these companies many times on several different days until the phone was answered. While not deemed a failure in this study, it most likely would have been had a consumer been contacting the company. After two or three tries, we suspect that most people would have given up.

⁵ M. Schoem, public comments at the International Consumer Product Health and Safety Organization Conference, February, 2001; and telephone conversation with A. Schoem.

Regulation Needed

In a petition to CPSC, CFA has asked that the agency promulgate a regulation, under section 10 of the Federal Hazardous Substances Act, to require all manufacturers, distributors, wholesalers and retailers to honor recalls entered into with CPSC **indefinitely**. In addition, when a company goes out of business or changes a telephone number or other recall contact information, the petition seeks a requirement that the manufacturer report this change to CPSC so that this information can be made available to the public.

We are also asking CPSC Compliance Staff to contact the companies identified in this report and insist that they honor the recall. If CPSC learns that the company is not in business, we are also asking CPSC to alert consumers, in addition to our doing so, of the dangers associated with these products and of the need to throw them away.

As part of this study we also contacted product manufacturers involved in NHTSA child restraints (car seat) recalls. We identified two companies whose 800 numbers were disconnected or where the call could not be completed. We plan to contact NHTSA concerning the contact information for these two companies.

Problem Recall Contacts

Date of recall	CPSC Release #	Product Manufacturer	Problem	Product Category	Number of Units Recalled	Result of contact	Notes
97							
Jan-83	83-003	NHTSA 97X & 97Y Downunder	Shoulder Belt Placemeter	Car Seat	30,000	1	
Feb-84	84-013	American Toy & Furniture	Entrapment	Playground Equipment	7,400	1	
Jul-85	85-035	Bassett	Fire Hazard	Crib	Undisclosed number	1	
Apr-90	90-077	Phies of America, Inc.	Suffocation	Toy ATV	3,000	1	
May-90	90-097	Fourth Little Pig	Choking & Laceration	Infant Cushion	282	1	
Aug-90	90-138	Small World Toys	Falls	Rattles	1,600	1	
May-91	91-075	Blanch USA	Falls	Bicycles	700,000	1	
Aug-91	91-114	Polymedics	Lead Paint	Art Supplies	1,735	1	
Mar-92	92-058	Smith Cabinet Mfg. Co.	Entrapment	Crib	332,761	1	
May-92	92-065	M. Grumbacher	Lead Paint	Art Supplies	8,500	1	
May-92	92-085	Island Wood Products	Falls	Art Supplies	11,618	1	
Jul-92	92-119	Everything's a Dollar Store	Choking & Aspiration	Swing Sets	9,000	1	
Sep-92	92-130	T.P.I.	Choking Hazard	Rattles	3,500,000	1	
Apr-93	93-059	BRK	Choking Hazard	Rattles	1,300	1	
Jul-93	93-098	Rainbow Mountain	Horn Failure	Smoke Detector	20,846	1	
Dec-93	94-019	Peg Perego	Entrapment	Youth beds & Rails	175,000	1	
Jan-94	94-107	Rosko	Falls	High Chair	21,200	1	
Jan-94	94-113	Sunkid	Choking Hazard	Bunk Bed	13,000	1	
Mar-94	94-043	Dalong	Falls	Bunk Bed	155,000	1	
Apr-94	94-076	Montgomery Ward	Entrapment	Bunk bed	11,000	1	
Apr-94	94-053	Cosco	Falls	Youth beds & Rails	Part of recall of 11,000 beds	1	
Oct-94	95-013	Bernards	Falls	Bunk bed	82,000	1	
Nov-94	95-016	AGA	Choking	Bunk bed	10,000 to 14,000	1	
Nov-94	95-021	Wholesale Warehousing	Entrapment	Alphabet Trucks	6,500	1	
Nov-94	95-151	El Rancho Furniture	Choking	Pull Toys/Timers	1,000	1	
Dec-94	95-030	Four Seasons	Choking	Music Center Toy	168,000	1	
Dec-94	95-034	Imagination	Choking	Toy Trucks	80,000	1	
Dec-94	95-049	Big Slave International	Burns/Fire Hazard	Micro Bake Ovens	1,933	1	
Dec-94	95-050	Just Toys	Choking Hazard	Rattles	Part of recall of 320,000 beds	1	
Mar-95	95-096	Jade Express, Inc.	Choking	Rattles	Part of recall of 320,000 beds	1	
May-95	95-116	Zal Woodworks	Entrapment	Bunk bed	7,464	1	
May-95	95-118	Fine Pine	Entrapment	Bunk bed	Part of recall of 41,000 beds	1	
May-95	95-118	H & H	Entrapment	Bunk bed	Part of recall of 41,000 beds	1	
Jul-95	95-151	MAFCO	Entrapment	Bunk bed	Part of recall of 41,000 beds	1	
Sep-95	95-174	Four Seasons	Choking/Ingestion Hazard	Bunk bed	Part of recall of 41,000 beds	1	
Sep-95	95-174	Atwood	Entrapment	Bunk bed	Part of recall of 41,000 beds	1	
Sep-95	95-174	D & J Mattress	Entrapment	Bunk bed	Part of recall of 41,000 beds	1	
Sep-95	95-174	Lee Anderson Furniture	Entrapment	Bunk bed	Part of recall of 41,000 beds	1	
Sep-95	95-174	Pine Cone Rustics	Entrapment	Bunk bed	Part of recall of 41,000 beds	1	
Oct-95	95-011	The Bunk Bed Shop	Entrapment	Bunk bed	Part of recall of 41,000 beds	1	
Feb-96	96-073	Debi's Toys	Choking	Stocking Toys	24,000	1	
Mar-96	96-080	Everything's a Dollar Store	Choking	Wooden Trucks	9,362	1	
Apr-96	96-099	Unishock suspension forks	Falls	Bicycles	13,000	1	
May-96	96-123	Jade Express, Inc.	Choking/Aspiration	Stuffed Animals	33,000	1	
Jul-96	97-021	Toy-O-Rama	Choking Hazard	Rattles	40,000	1	
Nov-96	97-095	Kids II	Aspiration	Stroller Toy	99,000	1	
Apr-97	97-095	Dolgetcorp	Choking	Kid Phone/Beeper	73,300	1	
Jul-97	97-159	LEWIS	Entrapment	Bunk bed	Part of recall of 31,000 beds	1	
Aug-97	97-176	Al Dan Trading	Choking	Crib Toys	747	1	
Sep-97	97-193	Pico Products	Eye other injuries	Star Wars Dolls	140,000	1	
Sep-97	97-193	Rosako Inc	Entrapment	Bunk Bed	Part of recall of 1,650 beds	1	
Oct-97	98-005	Spright Woodcrafters	Entrapment	Bunk Bed	Part of recall of 16,500 beds	1	
Apr-98	98-102	Al Dan Trading	Choking	Wooden Vehicle Toys	5,800	1	
Jun-98	98-134	Sanrio	Aspiration	Push Toys	29,000	1	
Oct-98	99-084	Michael Friedman Corp.	Choking & Aspiration	Rattles	2,000	1	
Nov-98	99-147	Proff's Furniture	Entrapment	Bunk bed	Part of recall of 37,000 beds	1	
Dec-98	00-010b	Peg Perego	Fire and Injury	Riding Toy (battery)	274,000	1	
Dec-99	00-022	Wards	Choking Hazard	Children's Clothing	7,200	1	
Feb-00	00-063b	Franklin Sports	Strangulation	Children's Clothing	Undisclosed Number	1	
Jan-01	91-034	Action Performance Toys	Fire Hazard	Basketball Net	Part of recall of 900,000	1	
Jul-02	92-715	Petous Imports	Falls	Rece Car Collectible	1,500	2	
Apr-04	94-051	Cutson Sing N Snooze	Suffocation	Strollers	100,000	2	
Feb-95	95-078	Gold Key	Falls	Baby Swing/Cradle	7,500	2	
May-95	95-116	Dan Brechner	Choking	Bunk bed	50,000	2	
Jan-96	96-050	Hardwick Knitted Fabrics	Flammable Fabric	Bracelets & Trucks	63,000	2	
					Part of recall of 320,000 beds	2	
					16,800	2	

Problem Recall Contacts

Date of recall	CPSC Release #	Product Manufacturer	Problem	Product Category	Number of Units Recalled	Result of contact*	Notes
Apr-98	98-100	Shut Manuf. Baseball Aids	Striking Injury	Baseball & Softball	12,000	2	
Mar-90	90-041	Shahwood Toy Manuf.	Choking Hazard	Crib Toys	39,640	3	
Sep-92	92-134	Santa Fe Trading Inc.	Don't meet standard	BMX Sidewalk bicycles	Undisclosed Number	3	
May-93	93-046	Pinky Elen Products	Falls	Booster Seats	600,000	3	Model # 415 only
Apr-94	94-118	Best Wear, Inc.	Strangulation	Children's Clothing	1,200	3	
May-95	95-085	Hebron Imports	Choking	Pop-pop Drum	925	3	
May-95	95-086	Pinky Elen Products	Falls	Booster Seats	no additional number given	3	
Dec-95	96-049	Senility	Entrapment	Bunk bed	Part of recall of 31,400 beds	3	Model # 415 and Model #4156
Nov-96	97-030	Price Stern Sloan	Hazardous field	Nature Activity Book	34,000	3	
Apr-97	97-095	Chicken & Egg	Entrapment	Bunk bed	Part of recall of 3,100 beds	3	
Sep-97	97-193	Temple Pine Furniture	Entrapment	Bunk bed	Part of recall of 1,650 beds	3	
Oct-97	98-004	AA of America	Choking	Bracelets - Party Favor	5300 sets	3	
Dec-99	00-033	Katie House	Choking Hazard	Sorting Toy	2,400	3	
86-97	NHTSA 97E-012	Bilux Child Safety	Buckle Failure	Car Seat	Undisclosed Number	3	
Dec-83	83-052	Pleland Incorporated	Entrapment	Playground Equipment	Undisclosed Number	4	
Mar-90	91-054	Seward Luggage Co.	Strangulation/Suffocation	Toy Chests	2.2 million	4	
Apr-94	94-052	SAA	Falls	Bunk bed	2,700	5	
Jun-94	94-087	World Imports Ltd.	Falls	Bunk bed	930	5	
Mar-95	95-088	Widish Juvenile Products	Entrapment & Falls	Cribs	5,000 - 7,000	5	
May-95	95-118	Sunier Cabinet Co.	Entrapment	Bunk bed	Part of recall of 320,000 beds	5	
Sep-95	95-174	Nordmies Corp.	Entrapment	Bunk bed	Part of recall of 41,000 beds	5	
Apr-97	97-095	Acme	Entrapment	Bunk bed	Part of recall of 3,100 beds	5	
Oct-90	90-157	Graco	Lacerations/Amputation	Strollers	Undisclosed Number	6	Should destroy product after six years - parts if available
Feb-92	92-054	Graco	Suffocation	Cradle Swing	189,000	6	Should destroy product after six years - parts if available
Aug-92	92-014	Blazon Flexible Flyer	Entrapment/Strangulation	Swing Sets	Undisclosed Number	6	
Dec-93	94-024	SEI	Falls	Bunk bed	Undisclosed Number	6	
Mar-94	94-039	L. Powell Co.	Falls	Bunk bed	6,000	6	
Jun-94	94-032A	LEM	Falls	Bunk bed	23,000	6	
May-95	95-118	Brill	Entrapment	Bunk bed	Part of recall of 3,100 beds	6	
May-95	95-118	Dover	Entrapment	Bunk bed	Part of recall of 320,000 beds	6	
Sep-95	95-174	Furniture Importers	Falls	Bunk bed	Part of recall of 41,000 beds	6	
Dec-95	96-053	Century	Entrapment	Bunk bed	Part of recall of 41,000 beds	6	
Apr-97	97-107	Century	Warming Failure	Smoke Detector	5,000	6	
May-97	97-125	Coaster Company	Falls	Strollers	186,000	6	Should destroy product after six years - parts if available
Jun-97	97-145	C&T International	Choking/Entrapment	Cribs	1,865	6	
Dec-97	98-045	Cosco	Entrapment/Strangulation	Cribs	800	6	
Dec-97	98-047	B&B Stores of Puerto Rico	Falls	Strollers/Car Seats	6,000	6	
Nov-98	99-020b	Henry Gym Sets by Menard	Suffocation	Portable Cribs	400	6	
Dec-98	99-032	IRIS, USA	Falls	Swing Sets	8,000	6	
Mar-99	99-074	Charlot Victor Publishing	Entrapment/Suffocation	Toy Chests	100,000	6	Letter to CPSC requesting file be closed. Few returns.
			Choking Hazard	Playset	44,000	6	

APPENDIX B

11/15/99

1. TASK NUMBER 990914CAA3479		2. INVESTIGATOR'S ID 8360		EPIDEMIOLOGIC INVESTIGATION REPORT
3. OFFICE CODE 860	4. DATE OF ACCIDENT YR MO DAY 99 06 08	5. DATE INITIATED YR MO DAY 99 09 20		
6. SYNOPSIS OF ACCIDENT OR COMPLAINT UPC A ten-month old boy was fatally injured when his neck became trapped between the frame of a changing table and a light-weight shelf. The shelf was resting on clip supports and a rabbit of the frame. The boy lifted the shelf with his head and poked his head through the opening. The shelf came down on the back of his head. The boy expired after about two minutes.				
7. LOCATION (Home, School, etc.) Home - 1		8. CITY Livermore		9. STATE CA
10A. FIRST PRODUCT Changing table - 1502		10B. TRADE/BRAND NAME Unknown		10C. MODEL NUMBER Unknown
10D. MANUFACTURER NAME AND ADDRESS Mfg is unknown; retailer is Sears & Roebuck Company				
11A. SECOND PRODUCT None		11B. TRADE/BRAND NAME N/A		11C. MODEL NUMBER N/A
11D. MANUFACTURER NAME AND ADDRESS N/A				
12. AGE OF VICTIM 210	13. SEX Male - 1	14. DISPOSITION Fatal - 8	15. INJURY DIAGNOSIS Anoxia - 65	
16. BODY PART (S) INVOLVED All parts - 85	17. RESPONDENT Respondent - 1	18. TYPE OF INVESTIGATION other - 3	19. TIME SPENT (OPERATIONAL HOURS) 8.0	
20. ATTACHMENT(S) multiple - 9	21. CASE SOURCE Complainant 7-(H9990113A)		22. SAMPLE COLLECTION NUMBER None	
23. PERMISSION TO DISCLOSE NAMES (NON MEISS CASES ONLY) There is no signed document				
24. REVIEW DATE 991015	25. REVIEWED BY 8101		26. REGIONAL OFFICE DIRECTOR	
27. DISTRIBUTION O:EHDS CC:				

CPSC FORM 182 (12/96) Approved, signed, dated, and filed 10/12/01

10/12/01
MFR/PRR
Comments made
Comments attached
Excisions requested
Firm has not requested
further notice

10/12/01
SA 6 AMM Cleared
Products released
Firm identified
Comments Processed

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The contents of this report are based on an interview with the victim's mother and a telephone conversation with the person who purchased the product. The police report was obtained and the product examined. The coroner's report is still pending.

PRE-INCIDENT:

Scene of the event is one of the bedrooms of a single-family residence. The family consisted of two adults and two children; one is a girl four years old and the other, the victim, a boy of 10 months. Just prior to the birth of the 10-month old child, a next-door neighbor gave the family a changing table as a gift. The neighbor had purchased the table brand new in November of 1993 from a local outlet of a large nationwide retail establishment and had used it for several years without a problem. One of the reasons, the respondent suspects, that the neighbor family never had a problem is that most of the time the table had items and boxes piled on the second shelf; hence the shelf always remained firmly down against the support clips and the frame rabbet – it was the second shelf together with the frame support that caused the victim to be fatally injured.

The respondent didn't really want the changing table. She felt that she had no use for it. She nearly always changed the child on a blanket on the floor. In that way, if the child got away from her, he wouldn't fall off of anything. At times, which were not very often, she changed him on the dresser. Regardless, she never used the changing table for its intended purpose. She wanted to dispose of it, but her husband asked that she keep it. Disposing of the table, a gift, would be insulting to the neighbors, he said. So the family kept the table and placed it in a corner of the bedroom between the crib and the dresser and positioned it so that it would not fall over (see page 8 of Exhibit A). The distance between the table and crib was about a foot. At times the respondent placed items on the top of the table and also on the second shelf. But because the eldest child, a girl, and later the boy, tended to pull objects off of high places, the respondent finally removed everything from the top of the table and also from the second shelf. In that way, the children would not be able to pull objects off and on to themselves.

The respondent was very much concerned with the safety of the home. She kept track of CPSC recalls and solicited the help of friends and professionals to advise on the safety of her home. Her home was safe, she was told. However, the furniture escaped everyone's attention, and the hazard built into the changing table remained hidden.

The victim is described as being a healthy boy who smiled and babbled a lot. He would raise his arm and wave to friends and neighbors, a practice that he started when 4 weeks of age. He was now at the crawling stage. Although he could not yet walk, he was able to stand provided he could hold onto something. He was in the habit of sticking his head out and peering over things. Although he had some ailments such as an ear infection a few months prior, he was feeling fine at the time of the incident and weighed about 28 lbs. He was very much attached to the respondent and followed her wherever she went whenever he had a chance. Whenever he got into a problem and needed help, he called for her. At times he would get involved with a new toy, or with a particular TV program. Then, he would spend time alone. He mother finally became concerned that the boy was spending too much time with her, and not enough elsewhere such as playing with his (older) sister. So she began to push the boy toward his sister by suggesting that he play with her. Then, when he did, she secretly watched to make sure that he

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was playing and happy. She had to watch in secret because otherwise the boy would come running over to her.

INCIDENT:

It was about 11:00 in the morning. The respondent had just finished feeding the boy in the dining room when he showed signs of being sleepy. She was ready to put the boy to bed when he began to show interest in playing with his sister. Such was somewhat unusual, she thought - usually he didn't volunteer to go play with others. The respondent did not want to pass up the opportunity. She lifted him over the door gate and put him down in the hallway. This was the first time that the mother let the boy travel down the hallway by himself. He crawled rapidly from the gate to the bedroom where he joined his sister. The respondent poured herself a cup of coffee and sat for a moment to drink it. A minute or so later she realized that all was quiet. Her daughter (the boy's sister) came back to the dining room but said nothing. She began to wonder what was happening in the bedroom. The mother went to the bedroom and looked in but saw nothing in motion. She looked about but didn't see the boy. The TV was turned on - the family usually left the TV turned on during the day, and she thought that perhaps the boy was watching his favorite program from his hidden spot behind the big chair. She looked behind the chair, but he wasn't there. She turned around, and there, she saw him, lifeless, in the changing table.

He was standing on the first shelf of the table with his head over the frame member that held the second shelf. His throat was down on the frame edge, which is about 3/4 inch wide. The second shelf board was down on the backside of his head and neck. She pulled the boy out. He was lifeless. She screamed to her husband to call 911 emergency. Her husband has a night-shift job and was asleep. He got up immediately and called emergency. The respondent, who had taken a professionally-administered CPR course sometime back, applied CPR to the boy. She then took him outside, put him on the lawn, and continued CPR until the paramedics arrived at which time they took over. The paramedics only took about four minutes to arrive. They continued the CPR on the front lawn for a great length of time - maybe an hour, but they were unable to revive the boy. They subsequently took him to hospital emergency where he was pronounced deceased. Later, medical personnel told the respondent that the boy had probably already expired when she found him in the changing table. And, that although only some two minutes had passed from the time she had last seen the boy crawl to the bed room to the time she found him, it only takes one minute and forty-five seconds for a child of his age to expire in such a position.

POST-INCIDENT:

The respondent inspected the changing table. All three shelves are loose. They rest on clips or brackets that resemble those found on bookcases. The shelves are made of 1/8 inch pressed board and are light-weight. One would not think that such a shelf could be a killer, she said. However, the edges are somewhat sharp. Placing the hand such as shown in Photograph 6 (recreation of how the mother found the child) left an impression on the skin that lasted for nearly a minute. Whether the sharpness of the shelf edge contributed to the fatality remains unknown. The boy crawled onto the first shelf and then stood up. His head lifted the second shelf off of the supports, and he put his head through the opening. He liked to stick his head out of things and show-off and be "king of the mountain". He was now king. But, when his head

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went over the frame member, his neck came down on the 3/4 inch frame edge. The shelf, which acted like a hinged cover, came down on the back of his head and neck and the boy expired.

The problem, the mother realized, is that the second shelf is not tied down. Heavy items on the shelf would have kept it down, but the respondent had taken all such down from the shelf. The retailer where the subject table was allegedly purchased is currently carrying a very similar changing table in stock. However, the second shelf on that table is tied down. Apparently, the changing table of the type involved in the incident is of an older design. However, a number of such tables appear to still be in consumer's hands -- in speaking with people, the respondent has found two persons who have similar changing tables (i.e., tables with shelves that are not tied down); none were involved in an incident, but they could be, she told them.

PRODUCT DESCRIPTION:

The product is a (baby) changing table. One of two changing pads used was labeled "Evenflo."

Manufacturer: The manufacturer remains unidentified -- the product has no identification.

Retailer: The woman (neighbor) who purchased the table said, in a telephone interview with me, that she purchased the table brand new from Sears Røebuck in Concord, CA.

Dimensions: The table is 20 inches wide, 36-1/4 inches long, and 39-1/2 inches high (bottom of leg to top of leg).

The top shelf (the changing shelf) is 32 inches high; the middle shelf is 19-1/2 inches high; the bottom shelf is 6-1/2 inches high. Each shelf is 34-3/8 inches long, by 18-1/2 inches wide, by 1/8 inch thick. The material of the shelves is pressed (fiber) board.

SAMPLE COLLECTED:

None. The respondent is holding the sample for a possible lawsuit.

EXHIBITS:

Assignment

Exhibit A: Police report, 10 pages.

Photographs:

- (1): The changing table
- (2): Close-up of one of the three shelves.
- (3): Reverse side of the shelf
- (4): The changing table without the shelves; also seen are the shelf support clips.
- (5): Close-up of a typical support clip.
- (6): The mother illustrates how she found her child.
- (7): Recreation of the incident with a toy bear.
- (8): Recreation, another view
- (9): Recreation, another view
- (10): Design on the headboard
- (11): Close-up of one of the decorative spindles
- (12): The table has a child safety belt.
- (13): The belt has a warning printed on it.
- (14): Close-up of the warning on the belt.

END

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LIVERMORE POLICE DEPARTMENT
CRIME/INCIDENT REPORT

CRIME INCIDENT		ADD'L OFFENSES IN NARRATIVE		PAGE 1 OF 6		CASE # 99-0608-12	
CODE SECTION AND DESCRIPTION				CLASSIFICATION	DAY OF WEEK	MONTH	DAY
1 Information only				9084	Tu	06	08
LOCATION OF INCIDENT				CITY	BEAT	AREA	TIME OF DAY
12 959 Algonquin Way, Livermore					13 01		11 1258
V NAME (LAST, FIRST, MIDDLE OR ORGANIZATION)				RESIDENCE ADDRESS		CITY	
W NP 19 VASH, LOGAN				16 #12		RESIDENCE PHONE	
DATE OF BIRTH		ID NUMBER & TYPE		RACE	SEX	ADD'L INFORMATION (VICTIM'S VEHICLE, IF APPL)	
18 071898		19		20 W	21 M	22	
OCCUPATION				BUSINESS ADDRESS		BUSINESS PHONE	
23				24		25	
V NAME (LAST, FIRST, MIDDLE)				RESIDENCE ADDRESS		CITY	
W NP 26 VASH, FRIFOLEY				27 #12		RESIDENCE PHONE	
DATE OF BIRTH		ID NUMBER & TYPE		RACE	SEX	ADD'L INFORMATION	
28 060673		29 A4891707		30 W	31 F	32	
OCCUPATION				BUSINESS ADDRESS		BUSINESS PHONE	
33				34		35	
SUSPECT #1 (LAST, FIRST, MIDDLE) <input type="checkbox"/> NOT SEEN				RACE	SEX	AGE	DOB
36				37	38	39	40
CLOTHING DESCRIPTION				ADDRESS		PHONE	
41				42		43	
SUSPECT #2 (LAST, FIRST, MIDDLE) <input type="checkbox"/> NOT SEEN				RACE	SEX	AGE	DOB
44				45	46	47	48
CLOTHING DESCRIPTION				ADDRESS		PHONE	
49				50		51	
ADDITIONAL INFORMATION / FURTHER SUSPECT DESCRIPTION (GLASSES, TATTOOS, SCARS, TEETH, ETC.)				CHECK IF MORE NAMES IN CONTINUATION		52	
53				54		55	
HAIR LENGTH		HAIR TYPE		HAIR STYLE		FACIAL HAIR	
56		57		58		59	
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LIVERMORE POLICE DEPARTMENT
ADDITIONAL PERSONSCASE #
99-0608-12

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REPORTING OFFICER: P.E. Nelson DATE AND TIME OF REPORT: 6/10/99 1500 APPROVED BY: J. Linder Foo DATE: 6-10-99																																																																																																																																							

 CONTROLLED DOCUMENT
 DUPLICATION OR REISSUANCE CONTROLLED BY LAW
 LIVERMORE POLICE DEPARTMENT

Livermore Police Department
Narrative

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990914CAA3479

Case Number: 99-0608-12

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FRIFOLEY VASH and STUART VASH are married. LOGAN VASH (10 months of age) is their child. For clarity they will be referred to by their first names in this report. BAXTER is FRIFOLEY's mother. DALIGCON is FRIFOLEY's grandmother. BAXTER, DALIGCON, and MEEK (the VASH's pastor) were present at this incident at the time of my arrival.

On the listed date and time, LPFD and AMR crews responded to the listed address to the report of a non-breathing infant. Upon their arrival, they found LOGAN unresponsive. They began CPR. As I arrived, AMR transported LOGAN to Valley Care Hospital, Pleasanton. FRIFOLEY, STUART, and MEEK followed AMR to the hospital in their own private vehicle. BAXTER and DALIGCON remained at the home.

BAXTER explained that she and DALIGCON responded to the VASH residence after receiving a telephone call (from FRIFOLEY) regarding the medical emergency involving LOGAN. Upon their arrival at the VASH's, FRIFOLEY told them that she placed LOGAN in his room to play while she worked in a separate room in the home. For a short period of time she did not hear any noises coming from LOGAN's room and thought this was unusual. When she checked on his welfare, she discovered that LOGAN's head and neck had become stuck in between a baby changing table shelf and shelf support rail. LOGAN was not breathing. FRIFOLEY freed LOGAN and called 9-1-1.

Prior to my leaving the VASH residence for Valley Care Hospital, I found a baby changing table laying on it's side in the front yard. LPFD and AMR crews explained that while they

Reporting Officer
P.E. Morton, #38
Distribution

Date
06/08/99
Clerical Action

Approved By/Date

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LIVERMORE POLICE DEPARTMENT

J. T. Anderson #1000 6-10-99

Livermore Police Department
Narrative

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990014CAA3479

Case Number: 99-0608-12

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were tending to LOGAN, FRIFOLEY had thrown it out of the home during an emotional outburst due to LOGAN's medical condition/emergency. Inside the VASH residence I noted that numerous baby safety measures were in use at the home, including safety gates and child-proof latches. The room in where the changing table had been kept was tidy. There was no sign of struggle or forced entry and I noted nothing unusual inside the home.

I responded to Valley Care Hospital several minutes behind AMR. Upon my arrival at the emergency room, hospital personnel were tending to LOGAN. At 1348 hours, Dr. DUECKER pronounced LOGAN dead. Dr. DUECKER advised FRIFOLEY and STUART of LOGAN's demise.

At various times throughout my stay at the hospital I spoke with FRIFOLEY, STUART, and MEEK in an attempt to discover what had happened to LOGAN. FRIFOLEY and STUART were extremely emotional. Through MEEK's assistance I was able to obtain a similar verbal statement to that of BAXTER's. FRIFOLEY and STUART added that LOGAN was able to crawl on his own. They also said he was able to pull up his own body weight and stand while holding onto an object. They surmised that LOGAN crawled to the changing table and pulled himself up. At sometime while standing at the table, he got his head caught in between one of the shelves and its supporting frame. Also through our conversation, I was able to determine that FRIFOLEY and STUART got the used changing table from a neighbor several months prior to LOGAN's birth. I was unable to determine how long LOGAN had been caught in the table.

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Reporting Officer
P.E. Morton, #38
Distribution

Date
06/08/99
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Approved By/Date

J. Tuckman #1000 6-10-99

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SGT. TRUDEAU also responded to this incident. He remained at the VASH residence while I followed AMR to the hospital. CSS BANKE responded to the VASH residence at my request. Upon her arrival, she photographed the residence and baby changing table. She collected the changing table and padding as evidence and responded to Valley Care hospital to photograph LOGAN.

LOGAN was secured to a backboard via straps and a head bed. His body and extremities had signs of mottling and his body was cold to the touch. I saw no obvious signs of trauma to his person. I did note a small bruise to his left throat/neck area underneath the neck collar/brace he was wearing. CSS BANKE photographed LOGAN.

Valley Care hospital staff contacted ACSO Coroner's division and notified them of LOGAN's death. ACSO cleared LOGAN for movement to the morgue area of the hospital and I returned to Livermore.

Once back at LPD, I contacted CSS BANKE who was booking the film and changing table from this incident (refer to property report). Upon further examining the table I noted its dimensions were approximately 4'6" tall, 3'00" wide, and 1'08" deep. It had a large changing pad on the top with an older, thinner pad underneath. The middle shelf was approximately 1'07" from the bottom. The lowest shelf was approximately 0'06" from the bottom. Both the middle and bottom shelf was made from a particle board material that was approximately 1/16" thick. Each shelf was loosely set on top of dowel-type pins on the inside.

Reporting Officer
P.E. Morton, #38
Distribution

Date
06/08/99

Approved By/Date

Clerical Action
CONTROLLED DOCUMENT

DUPLICATION OR REISSUANCE CONTROLLED BY LAW
LIVERMORE POLICE DEPARTMENT

J. Trudeau #300 6-10-99

Livermore Police Department
Narrative

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frame of the table. Although the large pad appeared to be new, the remainder of the table and its components appeared to be original. There appeared to be no changes made to the table itself and there appeared no way to secure the shelves to the table. The table had no manufacture markings. The thinner changing pad had markings stating that it was made for the Evenflo furniture company. I was unable to make contact with the Evenflo company to determine if they were the manufacturer of the changing table, and/or if there were any outstanding recalls on this product.

Recommendation: I completed this report to document the incident only. Refer this incident to CIU so as to contact ACSO Coroner Division to obtain a cause of death.

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EXHIBIT A

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DUPLICATION OR REISSUANCE CONTROLLED BY LAW
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Reporting Officer
P.E. Morton, #38
Distribution

Date
06/08/99
Clerical Action

Approved By/Date

J. Tucker #000 6-8-99

Livermore Police Department
Narrative Report

Page 1

Case #99-0608-12

I am currently assigned to the criminal investigation unit of the Livermore Police Department as a crimes against persons detective.

On 06-14-99 I received this case for follow up investigation with the Alameda County Coroners Office in regards to the death of Logan Vash.

At approximately 1000 hrs I called the Alameda County Coroners Office and spoke with Deputy Coroner Jackie Washam and briefly discussed the details of this case. Dep. Washam informed me that the results of L. Vash autopsy are consistent with the facts in this case and that the cause of death of Vash was traumatic asphyxiation. (For further autopsy details, refer to the Alameda County Coroner's report #1999-01706).

990914CAA3479

EXHIBIT A

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LIVERMORE POLICE DEPARTMENT

es
Reporting Officer
Detective Garrison
Distribution

Date
June 14, 1999
Clerical Action

Approved by

8910
6-15-99

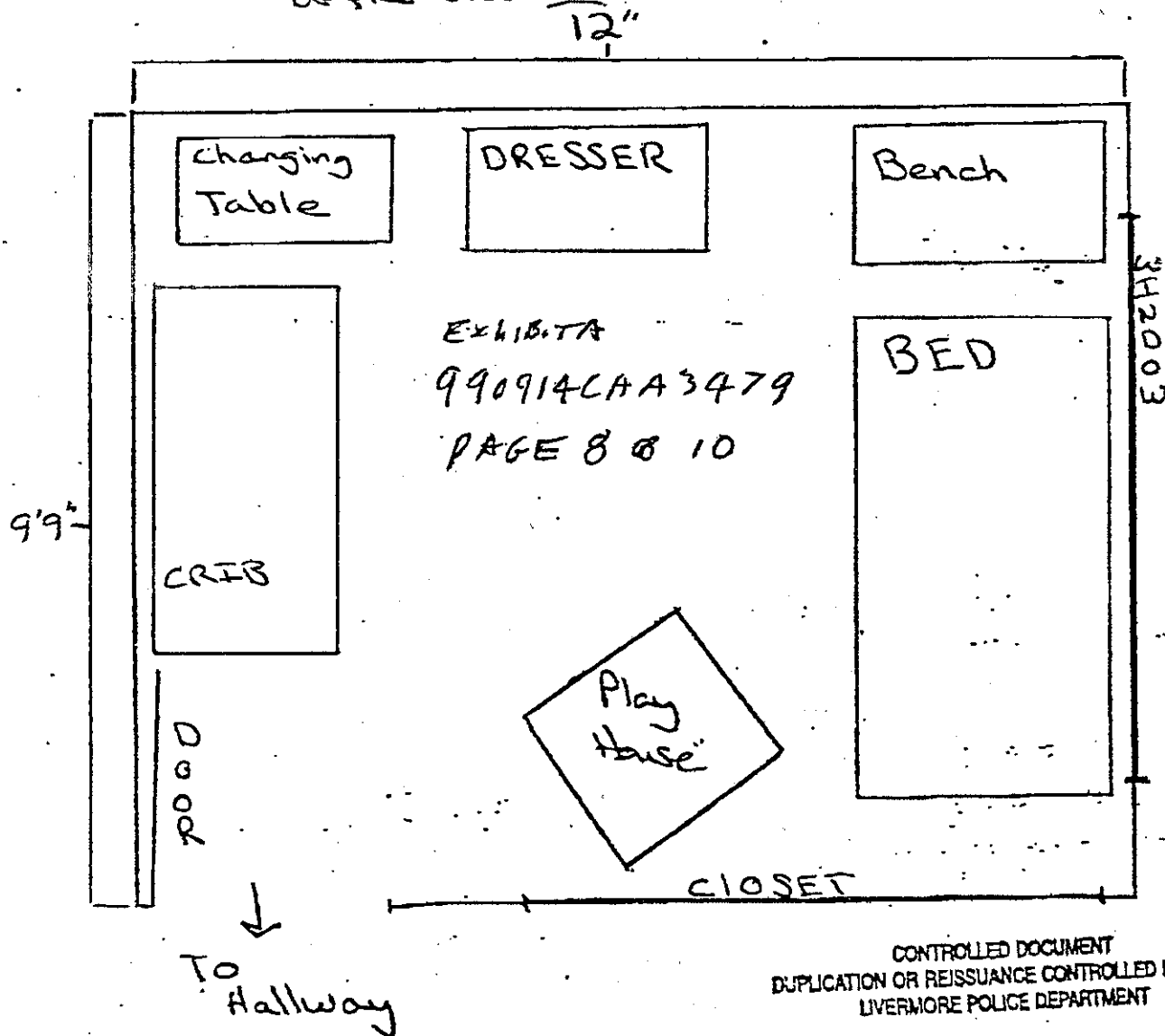
STATE OF CALIFORNIA
FACTUAL DIAGRAM
 CHP 555 Page 4 (Rev. 8-87) OPI 042

Page 1 of 2

DATE OF COLLISION (MO. DAY YEAR)	TIME (HRS)	MOBILE	OFFICER I.D.	NUMBER 99-0608-12
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ALL MEASUREMENTS ARE APPROXIMATE AND NOT TO SCALE

***NOTE:** The changing table was not in the Bedroom at the time of the sketch, but was placed in the drawing to show its placement at the time of the occurrence.



CONTROLLED DOCUMENT
 DUPLICATION OR REISSUANCE CONTROLLED BY LAW
 LIVERMORE POLICE DEPARTMENT

Northwest Bedroom at
 959 Algonquin Way

NOT TO
 SCALE

99-0608-12

PREPARED BY JL. Banke	LD NUMBER CSSG	MO. DAY YEAR 060899	REVIEWER NAME Kluets	MO. DAY YEAR 6 25 99
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LIVERMORE POLICE DEPARTMENT
NARRATIVE REPORT

CODE SECTION AND DESCRIPTION 1 <u>Info. Only</u>	CONTINUATION 2 <input type="checkbox"/>	SUPPLEMENTAL 3 <input checked="" type="checkbox"/>	CASE # 4 <u>99-0608-12</u>	PAGE 5 <u>2</u>
VICTIM'S NAME (LAST, FIRST, MIDDLE)	ADDRESS		PHONE	
NARRATIVE (INCLUDE ACTIONS AND CONVERSATION BY SUSPECT(S) AND VICTIM(S) AND OTHER EVENTS NOT PREVIOUSLY COVERED)				
<p>Although the changing table was not in the bedroom at the time I sketched the room, it was placed in the drawing for the purpose of showing its placement at the time of the incident. When I arrived at the scene, Sgt. Trudeau pointed out the area where the changing table had been. There also were marks and indentations on the carpet showing where the table had been.</p>				
<p>990914CAA3479 EXHIBIT A PAGE 9 of 10</p>				
<p>CONTROLLED DOCUMENT DUPLICATION OR REISSUANCE CONTROLLED BY LAW LIVERMORE POLICE DEPARTMENT</p>				
REPORTING OFFICER K. Berke	DATE AND TIME 06/08/99	REPORT WRITING TIME 10 10 min.	APPROVED BY R. C. 6/25/99	DISTRIBUTION 12
CLERK 12 C I T				

LPO-03

LIVERMORE POLICE DEPARTMENT PROPERTY REPORT

<input type="checkbox"/> RECOVERED STOLEN PROPERTY		<input checked="" type="checkbox"/> EVIDENCE		<input type="checkbox"/> FOUND		<input type="checkbox"/> SAFE KEEPING		PAGE 1 OF 1		KEY CASE # 99-0608-12		<input type="checkbox"/> ADDITIONAL CASES BELOW	
CODE SECTION AND DESCRIPTION Info Only				CLASSIFICATION 9084		DATE/TIME RECOVERED MONTH 06 DAY 08 YEAR 99		TIME OF DAY 1400					
LOCATION OF OCCURRENCE 959 Algonquin				CITY LIVERMORE									
NAME (LAST, FIRST, MIDDLE OR ORGANIZATION) Vash Logan				RESIDENCE ADDRESS #9				CITY LIVERMORE		RESIDENCE PHONE 443-7809			
DATE OF BIRTH 07/18/98		ID NUMBER & TYPE ---		RACE W		SEX M		ADD'L INFORMATION (VICTIM'S VEHICLE IF APPL.)					
NAME (LAST, FIRST, MIDDLE)				RESIDENCE ADDRESS				CITY LIVERMORE		RESIDENCE PHONE			
DATE OF BIRTH		ID NUMBER & TYPE		RACE		SEX		ADD'L INFORMATION (VICTIM'S VEHICLE IF APPL.)					
										CHECK IF MORE NAMES IN CONTINUATION <input type="checkbox"/>			
NARRATIVE / SPECIAL INSTRUCTIONS													

Photos of victim and place of occurrence

Refer to report for Narrative

ITEM	ARTICLE NAME	QTY	ID NUMBERS/MARKS	BRAND, MAKE OR MANUFACTURER	MODEL NAME, MODEL #, DESC.	CASE # IF DIFFERENT FROM BOX 2	QTY	TYPE	VALUE
01	Film	3rd		24exp -	100sp				
02	changing table	1		Evenflo	whit. wood infant table				
990914CAA 3479									
EXHIBIT A									
PAGE 10 OF 10									

CONTROLLED DOCUMENT
REPLICATION OR REISSUANCE CONTROLLED BY LAW
LIVERMORE POLICE DEPARTMENT

REPORTING OFFICER K. Banke CSS6	DATE AND TIME OF REPORT 06/08/99 1630	APPROVED BY [Signature]	DATE 6/8/99	CLARK CIT
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40 RELEASED BY:		41 CLEARED FOR RELEASE BY:		42 DATE/TIME RECEIVED:	
43 RECEIVED BY:		44 DEPOSITED BY: photos to F. Vash 9/16/99		45 LOCKED BY: garage	
46 DISTRIBUTION (1) DA (2) LFD (3) CRIME PREVENTION (4) TO		47 CHECKED CLERK <input type="checkbox"/> CHECKED AINS <input type="checkbox"/>		CD	

Sep-15-99 08:14A cpsc#san francisco, O.
SEP-14-1999 11:18 EPDS/HOO+1 415 744 2962 P.03
301 504 0127 P.16/26

W

380

INCIDENT INVESTIGATION REQUEST FORM

DOCUMENT NUMBER: H9990113A

DATE OF INCIDENT: 990608

CATID: SECTTR99

FOLLOW-UP REQUESTED

HAZARD ANALYSIS () SECT 15 (X)

TYPE FOLLOW-UP

TELEPHONE () ON-SITE ()

HEADQUARTERS CONTACT: Pam Major x 1373

Requested by:

Terri Rogers x 1363

ASSIGNMENT MESSAGE:

NOTE CAA DESIGNATION: HIGH VISIBILITY ON AN INFANT PRODUCT

Please investigate the attached incident.

Request information from official sources including medical examiner and whoever has custody of the product.

Person(s) to Contact: SEE ATTACHED

Guidelines:

990914 CAA 3479
Task Number: Date: 9/14/99

Assigned to:

SF00 Requested by: Faxed + Mailed

Sep-15-99 08:14A cpsc#san francisco 0
SEP-14-1999 11:18 EPUS/MOU

+1 415 744 2962 P.04
JUN 200 01:38 P.M. 1999

CONSUMER PRODUCT INCIDENT REPORT

Region: WESTERN

1. NAME OF RESPONDENT Frifoley Vash [sic]		2. PHONE NO. (HOME) (WORK) 925-443-7809 none	
3. STREET ADDRESS 959 Algonquin Avenue		4. CITY STATE ZIP CODE Livermore CA 94550	
4a. E-MAIL ADDRESS: none			
5. DESCRIBE INCIDENT OR HAZARD, INCLUDING DATA ON INJURIES DEATH-Consumer placed 28 lb. son on the floor to play and approximately 5-7 minutes later she returned to find son unconscious with his head trapped -cont-			
6. DATE OF INCIDENTS 6/8/1999	7. IF INJURY OR NEAR MISS OBTAIN AGE/SEX AND DESCRIBE INJURY: 10 M/M death by strangulation		8. IF VICTIM DIFFERENT FROM RESPONDENT, PROVIDE NAME LOGAN RELATIONSHIP son
9. DESCRIPTION OF PRODUCT wooden white changing table w/ cutout design		10. BRAND NAME unknown	
11. MFR/DISTRIBUTOR NAME, ADDR. & PHONE unknown unknown unknown unknown unknown unknown		12. MODEL, SERIAL NUMBERS none	
		13. DEALER'S NAME, ADDRESS & PHONE Sears Sun Valley Mall Concord, CA 925-246-1900	
14. WAS THE PRODUCT DAMAGED, REPAIRED OR MODIFIED? YES NO x IF YES, BEFORE OR AFTER THE INCIDENT? DESCRIBE:		15. PRODUCT PURCHASED NEW x USED DATE PURCHASED 11/1993 AGE 5yrs/10m	
		16. DOES PRODUCT HAVE WARNING LABELS? IF SO, NOTE: none	
17. HAVE YOU CONTACTED THE MANUFACTURER? YES NO x IF NOT, DO YOU PLAN TO CONTACT THEN? See narrative		18. IS THE PRODUCT STILL AVAILABLE? YES NO x IF NOT, ITS DISPOSITION Alameda County Coroner's office	
		19. MAY WE USE YOUR NAME WITH THIS REPORT? YES x NO	
FOR ADMINISTRATION USE			
20. DATE RECEIVED 09/10/1999	21. RECEIVED BY (NAME & OFFICE) jdf/HL		22. DOCUMENT NO. H9990113A
23. FOLLOW-UP ACTION 990914CAA3479		24. PRODUCT CODE(S) 1502	
25. DISTRIBUTION		26. ENDORSER'S NAME & TITLE JDF 09/10/1999	

CPSC FORM 175 (08/1998)

OMB 3041-0029

Sep-15-99 08:16A cpssc#san francisco 0
SEP-14-1999 11:19+1 415 744 2962 P.05
301 504 0127 P.04/04

CONSUMER PRODUCT INCIDENT REPORT

H9990113A

990914CAA3479

Narrative Continued

between space(exact size unknown) of changing table's shelf and its guard rail. Consumer freed son and began CPR. Husband called 911 and once paramedics arrived they performed CPR. Son was pronounced dead upon arrival at the local hospital ER by paramedics.

Consumer says there were no manufacturer or identifying markings on the changing table and consumer is waiting for the table to be released to her by Alameda County Coroner's Office.

Coroner's autopsy states the cause of death as traumatic asphyxia (referral # 1999-01706).

Distributor phone #: unknown

CPSC Source: HD

TOTAL P.04

Sep-15-99 08:13A cpssc#san francisco 0

+1 415 744 2962

P.02

Pleasanton, CA
(Alameda Co.)
Tri-Valley Herald
(Cir. D. 41,500)
(Cir. S. 45,400)

JUL 22 1999

Allen's P.C.S. Inc. 1999

Used furniture poses risk for babies

By Barbara Parkinson
STAFF WRITER

LIVERMORE — Shortly before 1 p.m. on June 8, Frickley Vash walked into the bedroom of her 10-month-old son, Logan, and saw the worst sight of her life — one she likely will never forget.

Logan was hanging, lifeless, from the bottom of his changing table, his neck caught in a gap between a shelf and a support bar. Paramedics were unable to revive him.

Sunday would have been Logan's first birthday, and Vash wants to use the occasion to warn other parents of the possible dangers of used baby furniture.

A neighbor had given Vash the table, which didn't have a manufacturer's label. It was the first piece of used furniture she had accepted, and she now wishes she had inspected it.

"I don't blame (the neighbor) at all," she said. "It's just abnormal for things to be handed down through a line of neighbors. And I can't blame myself, because it's not uncommon to have a nursery full of hand-me-downs."

Crib-safety lobby

That's just the problem, said John Lineweaver, president of the Denny Foundation, an organization based in Alameda that lobbies legislators nationwide for stricter crib-safety laws.

While some baby furniture regulations have been in place since the late 80s, used furniture circulates widely in second-hand stores, between families and generations of the same family, he said. As many as 30 million unsafe cribs currently are in use, he estimated.

The Consumer Product Safety Commission website (www.cpsc.gov) lists hundreds of children's products that have been recalled since 1990. There are car seats, bunk beds, cribs, swings, nurseries, pacifiers, strollers, playpens, rattles, and even a children's book but no changing tables.

Lineweaver said simply checking to see if a product has been recalled is not enough.



The Vash family celebrated what would have been Logan Vash's first birthday Sunday afternoon at Memory Gardens cemetery in Livermore. From left, Logan's mother Frickley, 26, sisters Mariah, 4, and Jordan, 10, and father Stuart Vash, 25, pose next to a hand-crafted grave marker.

"Stork recalls are so rare, parents might think their children are safe, but that is not the case," said Lineweaver, whose son Danny, then 2 years old, suffered permanent brain damage when his T-shirt caught on a crib post and strangled him. "Making your decisions to purchase on whether a product has been recalled is not the way to go."

Sentimental value

He said hand-me-down furniture is one of the most difficult problems to resolve, because people tend to attach sentimental value to children's furniture.

Jack Walsh, executive director of the Denny Foundation, who is in Washington, D.C., to lobby for crib-safety legislation introduced by Rep. Ellen Tauscher, D-Tennessee Valley, said there is no regulation of changing tables.

"You can build any kind of changing table you want," he said.

Buying standards

He said the foundation advises parents to buy changing tables with barriers on four sides and no catch points, where a baby's clothing could be caught in a fall. Parents should also make sure the parts don't fall apart easily.

"People buy things in the most likely condition you can imagine, because it's so new-like," Lineweaver said.

In the Vash case, Logan was

underneath the table. He may have pushed the lightweight, particle-board shelf up with his head, because there was nothing holding it in place, a police report said. He then put his head above the horizontal support bar, and the shelf fell on his neck, trapping his head and suffocating him, the report said.

Livermore Police Officer Phil Morton said the changing table was about five to 10 years old and in good condition. He said he found a similar table at a second-hand store in Southern California, but the shelves locked into place, unlike the one the Vashes had.

Frickley Vash, 26, celebrated Logan's birthday Sunday at Memory Gardens cemetery in Livermore with her husband Stuart, 25, a grocery store sales clerk, and their daughters Mariah, 4, and Jordan, 10.

They brought balloons to his grave, because he loved balloons.

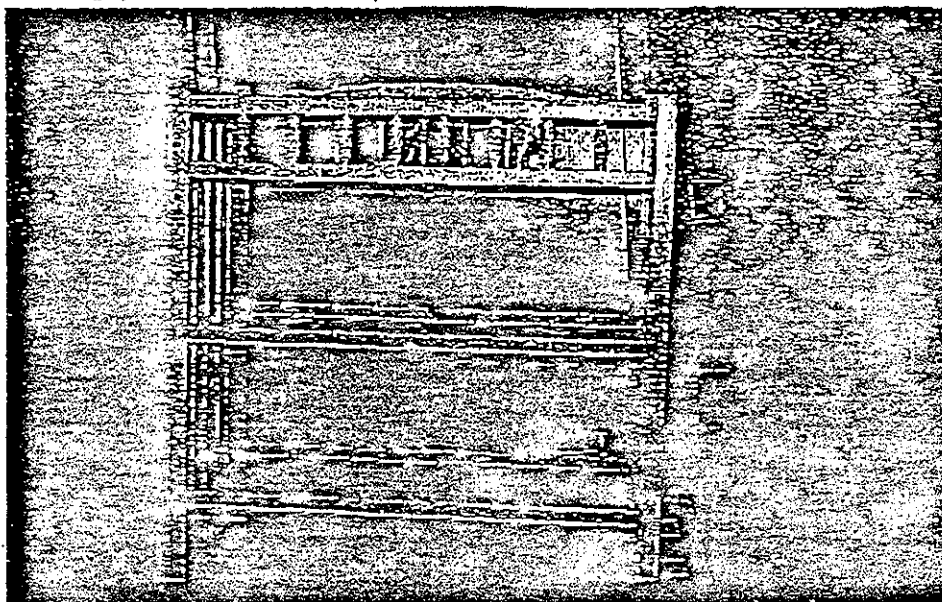
Logan delighted in attention, Frickley said. He would giggle, wave and blow kisses at passers-by. She said she still imagines herself catching his kisses in the wind.

"I keep thinking about how strong Logan is," she said, forgetting to use the past tense. "That little changing table took it all away."

For more information about the safety of used children's

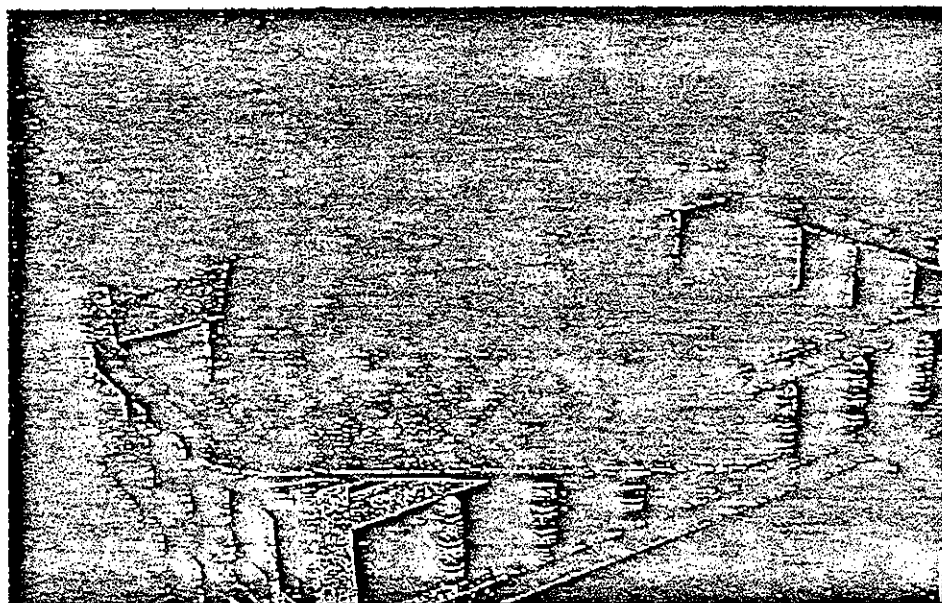
furniture, contact the Denny Foundation at 800-833-2668 or www.dennyfoundation.org, the Consumer Product Safety Commission, 800-638-2772 or www.cpsc.gov or Kids in Danger, www.kidsindanger.org.

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PHOTOGRAPH 1:

The changing table without the shelves, side view. Height of the table from the very bottom of the legs to the very top of the legs is 39-1/2 inches. The top (3rd) shelf is 32 inches high. The second shelf is 19-1/2 inches high; the bottom shelf is 6-1/2 inches high.

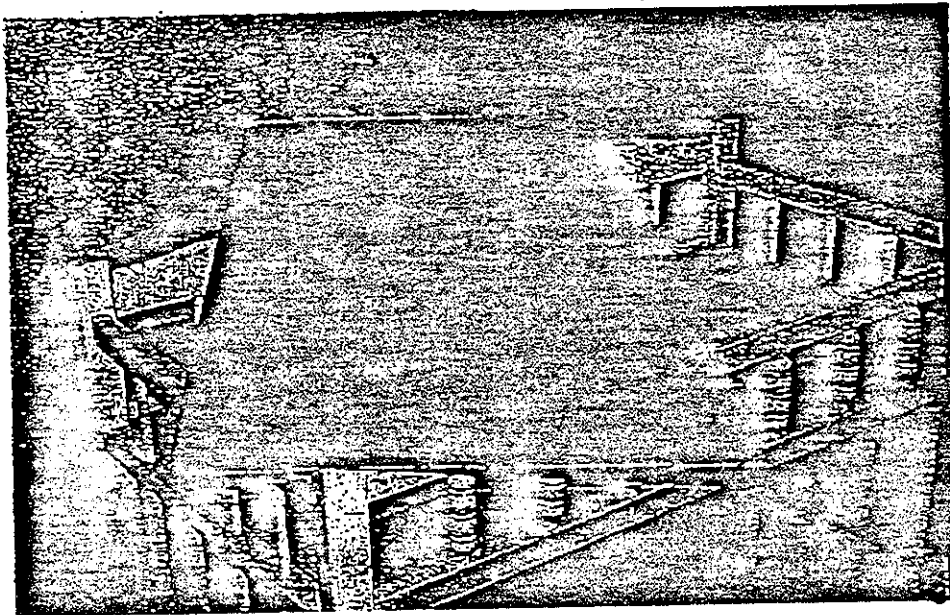


PHOTOGRAPH 2:

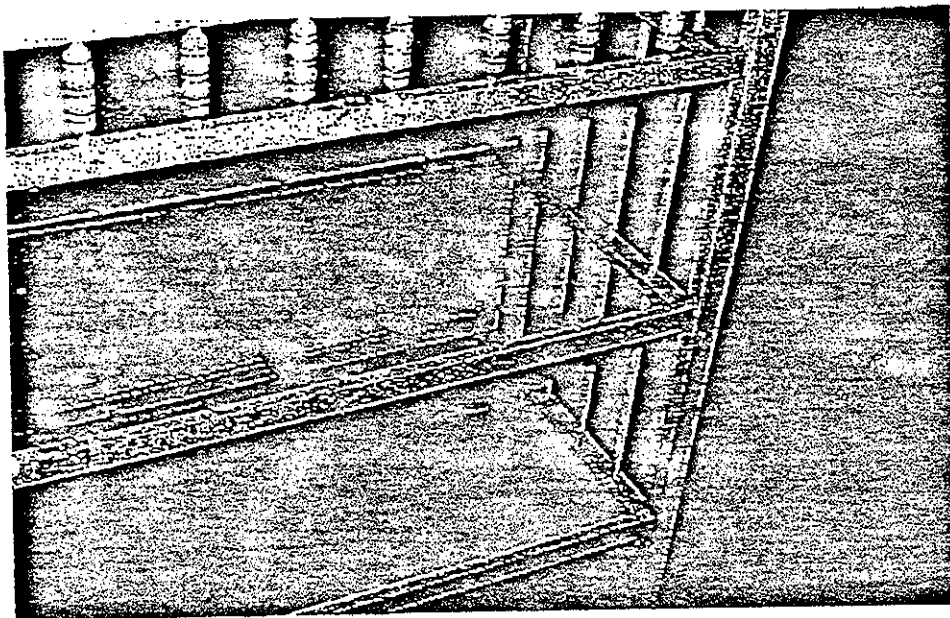
Close-up of one of the three shelves. The material is 1/8 inch pressed Board.

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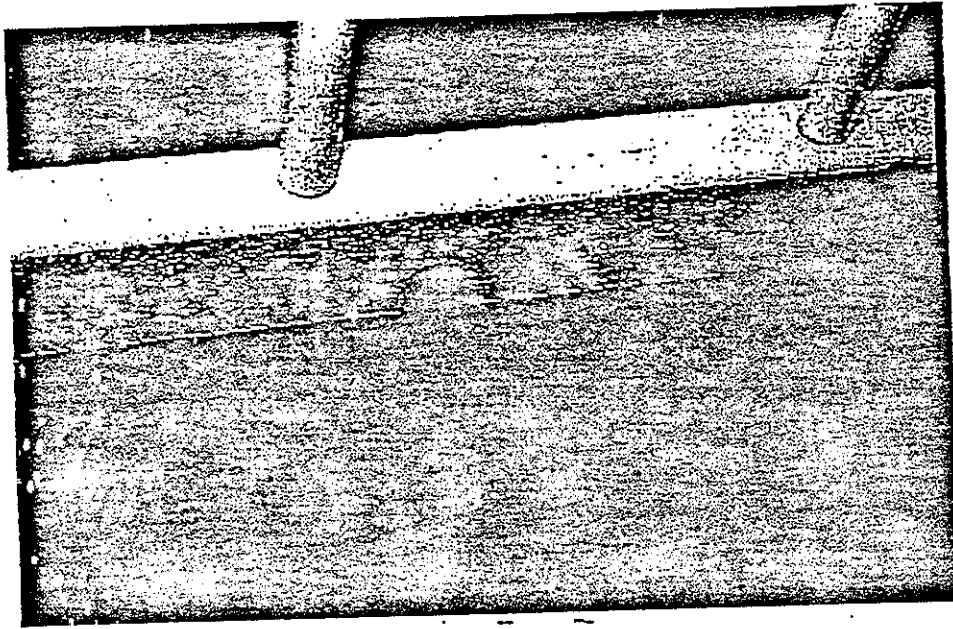
PHOTOGRAPH 3:
Reverse side of the shelf (all three shelves are identical). As can be seen, the material is pressed board.



PHOTOGRAPH 4:
View of the frame without the shelves. The shelves are supported on the side by clips; the shelf ends are supported by a rabbet cut into the wood.

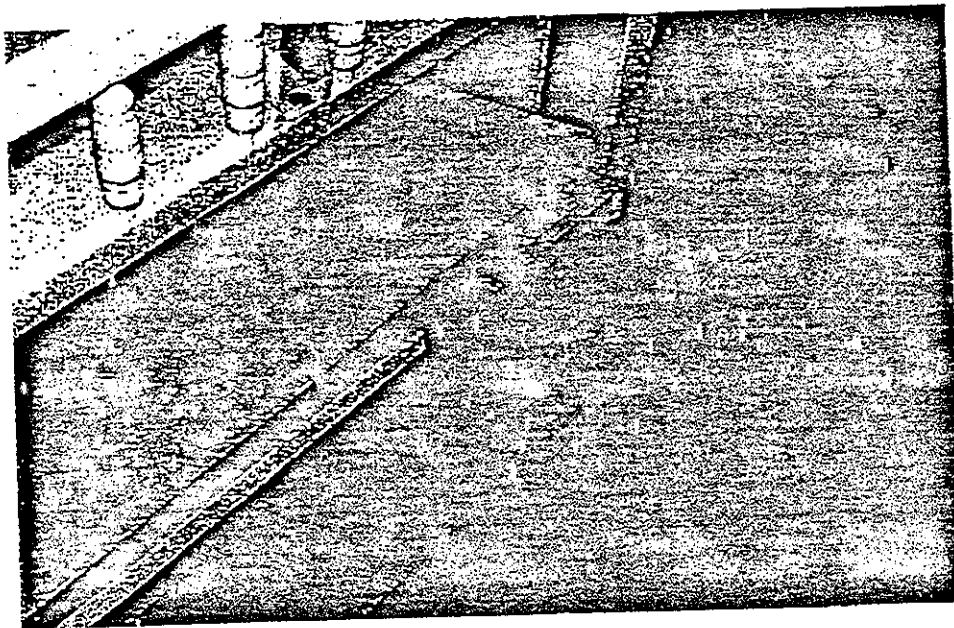
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PHOTOGRAPH 5:

Close-up of a typical clip; the clips, which resembles those found on regular furniture shelves, fit tightly into drilled holes and appears to be glued in.

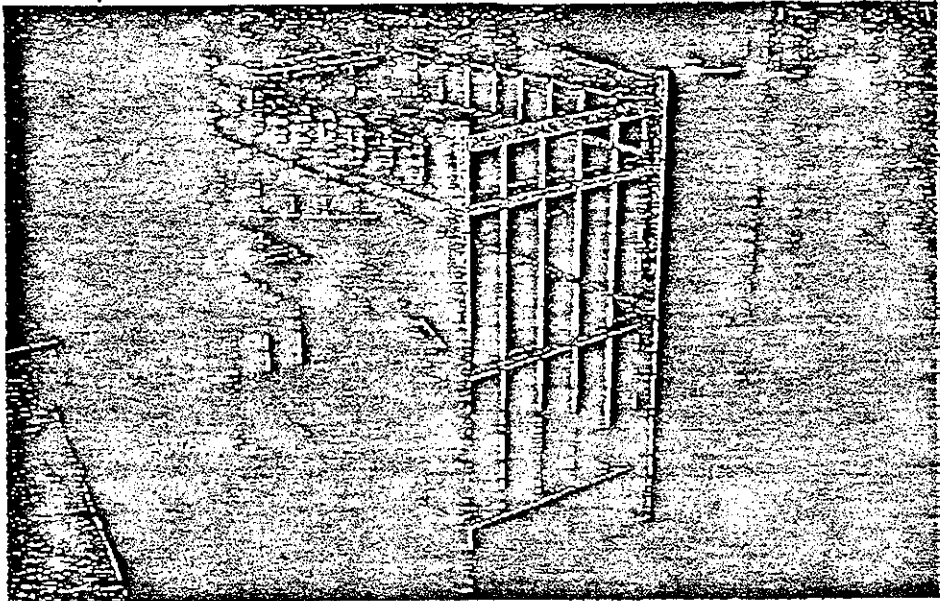


PHOTOGRAPH 6:

The child's mother demonstrates how she found her infant. The "lip" or edge of the support rail over which the hand is bent is $\frac{3}{4}$ inch wide (the rail is $1\frac{1}{8}$ inches by $\frac{3}{4}$ inches).

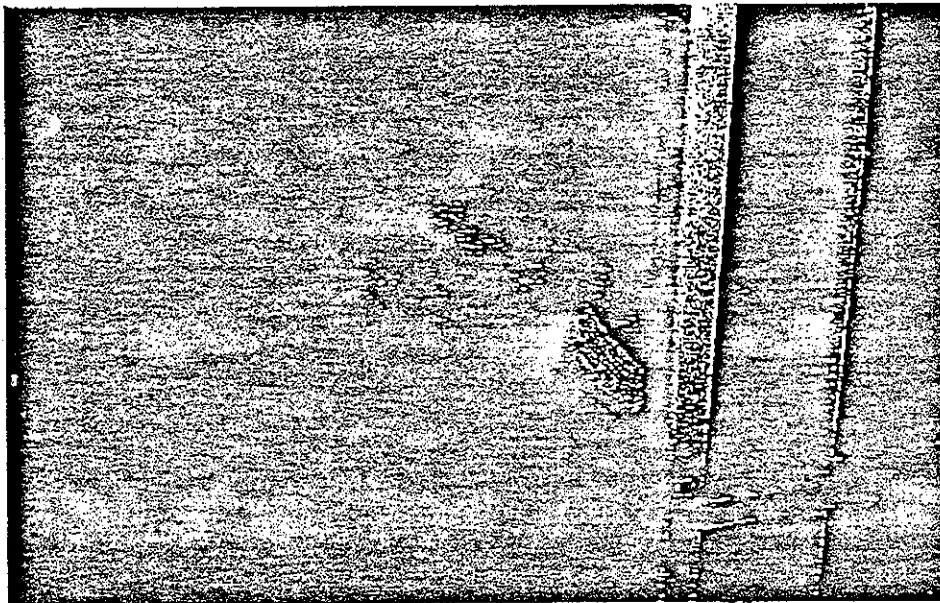
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PHOTOGRAPH 7:

The toy bear, placed in position by the mother, further illustrates how she found the child.



PHOTOGRAPH 8:

Recreation, another view.

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